CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935.

No. 494

ISABEL K. DIBBLEE, PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITION FOR CERTIORARI FILED OCTOBER 4, 1935.

CERTIORARI GRANTED OCTOBER 14, 1935.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 494

ISABEL K. DIBBLEE, PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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Docket No. 61036

APPEARANCES

For Taxpayer:

ALBERT J. DIBBLEE, Esq.

For Comm'r:

H. D. THOMAS, Esq.

DOCKET ENTRIES.

Transferred to Miss Matthews 1/15/34.

1931

Dec. 28—Petition received and filed. Taxpayer notified. (Fee paid).

" 28—Copy of petition served on General Counsel.

1932

Feb. 10—Answer filed by General Counsel.

" 15—Copy of answer served on taxpayer, assigned to Circuit Calendar.

Sept. 12—Motion for Circuit hearing at San Francisco filed by taxpayer.

1933

July 10—Notice of hearings at San Francisco, California, beginning 9/25/33.

Sept. 25—Hearing had at San Francisco before W. C. Lansdon, Div. 8. Submitted. Stip. facts filed. Briefs due Nov. 6, 1933—20 days for reply, if any.

1933

Nov. 1—Brief filed by taxpayer.

" 4—Motion for extension to Nov. 27, 1933 to file brief filed by General Counsel. 11/6/33 granted.

" 27—Motion for extension of 30 days to file Reply Brief filed by taxpayer. 11/28/33 granted.

" 27—Brief filed by General Counsel.

" 28—Copy of taxpayer's brief served on General Counsel.

Dec. 6—Order that petitioner be given thirty days after the filing of respondent's brief to file reply, entered.

" 18—Reply Brief filed by General Counsel.

" 22—Reply Brief filed by taxpayer. 12/26/33—copy served on General Counsel.

1934

Feb. 13—Opinion rendered Annabel Matthews, Div. 13. Judgment will be rendered for respondent.

" 16—Decision entered, H. F. Seawell, Div. 4.

May 8—Supersedeas bond in the amount of $5,000.00 approved and ordered filed.

" 8—Petition for review by U. S. Cir. Ct. of Ap. 9th Cir. with assignments of error filed by taxpayer.

" 8—Proof of service filed by taxpayer.

" 8—Praecipe filed. Proof of service thereon.

" 8—Affidavit of service of petition filed. [1*]

*Page numbering appearing at the foot of page of original certified Transcript of Record.

United States Board of Tax Appeals

Docket No. 61036

ISABEL K. DIBBLEE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION.

The above named petitioner hereby petitions for a redetermination of the alleged deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (IT:AR:E-1, EEW-60D), dated November 3, 1931, and as a basis for her proceeding alleges as follows:

1. The petitioner is an individual, to-wit, a married woman, residing on Upper Road, Town of Ross, County of Marin, State of California;

2. The notice of deficiency, a true copy of which is hereto attached marked Exhibit "A" and made a part hereof, was mailed to petitioner by respondent on or after the 3rd day of November, 1931;

3. The taxes in controversy are income taxes for the calendar year 1928 and, as computed by respondent, amounted to the sum of $1,690.30;

4. The determination of said tax set forth in said notice of deficiency is based upon the following errors, to-wit:

(a) Respondent erred in holding that the two year period contemplated by the "Capital Net Gain" provisions of Section 101 of the Revenue Act

of 1928 commenced to run from [2] the date of distribution to petitioner of certain stocks and bonds acquired by her by general bequest under the will of her deceased mother, and not from the date of death of her mother;

(b) Respondent erred in using the appraised value at the date of distribution to petitioner of said stocks and bonds above referred to as a basis for determining gain or loss upon the sale of said securities;

(5) The facts, upon which petitioner relies as the basis of this proceeding, are as follows:

(a) That petitioner is a citizen of the United States, and of the State of California, residing in the Town of Ross, in the County of Marin, in said state;

(b) That Harriett de Witt Kittle, the mother of petitioner, died on the 28th day of March, 1926, in the County of Marin, State of California, leaving a last will and testament, wherein and whereby said deceased, Harriett de Witt Kittle, did devise and bequeath all of her estate to her four children, to-wit, Allen I. Kittle, John C. Kittle, Lucia H. K. Sherman, and your petitioner, share and share alike;

(c) That said last will and testament was by order of the Superior Court of the State of California, in and for the County of Marin, duly and regularly admitted to probate on or about the 30th day of April, 1926, and thereafter, to-wit, on or about the 21st day of May, 1927, after proceedings duly and regularly taken and had in that behalf in

the matter of the estate of said deceased, a decree of final distribution was duly given, made and entered by said Superior Court wherein and whereby there was distributed to your petitioner, among other properties, those certain stocks and bonds particularly described in Exhibit "B", hereto attached and made a part hereof;

(d) That thereafter, subsequent to the 28th day of March, 1928, and during the calendar year 1928, petitioner sold said stocks and bonds and realized a net profit thereon over and above the value of said securities as of the 28th day of March, 1926, amounting to the sum of $27,730.94;

(e) That petitioner, in her individual income tax return for the calendar year 1928, returned said net profit as "Capital Net Gain" under the provisions of Section 101 of the Revenue Act of 1928;

(f) That respondent, in making his final determination of petitioner's income tax for the calendar year 1928, [3] computed the tax upon the net profits derived from the sale of said stocks and bonds as a tax upon "Ordinary Net Income" and not as a tax upon "Capital Net Gain";

(g) That respondent, in making his final determination of petitioner's income tax for the calendar year 1928, computed the net profits derived from the sale of said stocks and bonds by using as a cost basis thereof what he asserts to be the value as of the date of distribution to said petitioner.

WHEREFORE, petitioner prays that this Board may hear this proceeding and determine that there

is no deficiency in tax for which petitioner is liable for the taxable year 1928; and for such other and further relief as to this Board may seem meet and equitable.

ALBERT J. DIBBLEE
Attorney at Law
670 Mills Bldg., San Francisco, Cal.
GEO. E. H. SATCHELL, C.P.A.
369 Pine St., San Francisco, Cal.
Attorneys for Petitioner. [4]

State of California,
City and County of San Francisco.—ss.

Isabel K. Dibblee, being first duly sworn, deposes and says:

That she is the petitioner above named; that she read the foregoing petition and is familiar with the statements contained therein, and that the facts therein stated are true, except as to those facts stated to be upon information and belief, and those facts she believes to be true.

ISABEL K. DIBBLEE

Subscribed and sworn to before me this 23rd day of December, 1931.

[Seal] MARIE FORMAN
Notary Public in and for the City and County of San Francisco, State of California.

My commission expires: Jan. 9, 1933. [5]

EXHIBIT "A"

TREASURY DEPARTMENT
Washington

Office of
Commissioner of Internal
Revenue
Address Reply to
Commissioner of Internal Revenue
And Refer to

Nov. 3, 1931

Mrs. Isabel K. Dibblee
Hill Road,
Ross, California.

Madam:

You are advised that the determination of your tax liability for the year 1928 discloses a deficiency of $1690.30, as shown in the statement attached.

In accordance with section 272 of the Revenue Act of 1928, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of your tax liability.

HOWEVER, IF YOU DO NOT DESIRE TO PETITION, you are requested to execute the enclosed agreement form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this agreement will expedite the closing of your return by permitting an early assessment of any

deficiency and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the enclosed agreement, or on the date assessment is made, whichever is earlier; WHEREAS IF NO AGREEMENT IS FILED, interest will accumulate to the date of assessment of the deficiency.

Respectfully,

DAVID BURNET,
Commissioner.
By J. C. Wilmer,
Deputy Commissioner.

Enclosures:
Statement
Form 882
Form 870 [6]

STATEMENT

IT:AR:E-1
EEW-60D

In re: Mrs. Isabel K. Dibblee,
Hill Road,
Ross, California.

Tax Liability

Year	Tax Liability	Tax Assessed	Deficiency
1928	$8,329.10	$6,638.80	$1,690.30

Reference is made to your income tax return for the year 1928, in connection with the report of the internal revenue agent in charge, San Francisco, California, covering an examination of your books of account and records for the year in question.

Reference is also made to a conference held in the office of the internal revenue agent on April 17, 1930, in connection with your protest of April 9, 1930.

The principal issue involved is whether or not tax should be computed at 12½% under the capital net gain provision on gain derived from sale of certain securities acquired by inheritance.

Stocks and bonds sold in 1928 were inherited by general bequest from your mother's estate. The personal property was distributed May 21, 1927.

In the computation of tax you used the appraised value of the securities in question at date of the death of your mother, March 28, 1926, for the purpose of establishing the two-year period required under the capital net gain provisions of section 101 of the Revenue Act of 1928.

It is held that in the case of personal property acquired by general bequest the two-year period contemplated by the capital net gain provisions of the Revenue Act of 1928, commences to run from the date of distribution. The findings of the revenue agent are, therefore, sustained.

Earned income credit has been determined in accordance with the decision of the Circuit Court of Appeals for the Fifth Circuit in the case of McLarry v. Commissioner (30 Fed. (2d) 789), that is, where husband and wife render separate income tax returns on the community basis, the wife may within [7] the limitations provided in section 209 (a) (3) of the Revenue Act of 1926 and section

31 (a) of the Revenue Act of 1928, treat as earned income one-half of the salaries, wages and other income of the husband which constitutes income received for personal services actually rendered by him.

Earned income has been increased from $5,000.00 to $16,130.70 and earned income credit increased from $22.50 to $167.61.

The changes in income are as follows:

Net income reported on return (not including capital net gain)		$38,454.61
Add:		
1. Ordinary income increased		28,408.61
Total ordinary income		$66,863.22
Capital net gain reported	$32,504.14	
Capital net gain corrected	4,773.70	4,773.70
Adjusted net income		$71,636.92

Computation of Tax

Adjusted net income	$71,636.92
Less:	
Capital net gain	4,773.70
Income subject to surtax	$66,863.22
Less:	
Dividends	13,425.80
Income subject to normal tax	$53,437.42

Normal tax at 1½% on $4,000.00		$ 60.00
Normal tax at 3% on $4000.00		120.00
Normal tax at 5% on $45,437.42		2,271.87
Surtax on $66,863.22		5,526.75
Tax at 12½% on capital net gain of $4,773.70		596.71
Total tax		$8,575.33
		[8]
Brought forward		$ 8,575.33
Less:		
Earned income credit	$167.61	
Tax paid at source	78.62	246.23
Tax liability		$ 8,329.10
Tax assessed		6,638.80
Deficiency in tax		$ 1,690.30

Computation of Earned Income Credit

Earned net income	$16,130.70
Personal exemption claimed by husband	None
Normal tax at 1½% on $4000.00	$ 60.00
Normal tax at 3% on $4,000.00	120.00
Normal tax at 5% on $8,130.70	406.53
Surtax on $16,130.70	83.92
Total tax	$ 670.45
Credit of 25%	$ 167.61

Explanation of Changes

See explanation above.

You are advised that a copy of this communication has been transmitted to your attorney, Mr. Whitney B. Sanders, 351 California Street, San Francisco, California, who has on file in this office a duly authorized power of attorney. [9]

EXHIBIT "B"

SECURITIES RECEIVED BY PETITIONER FROM THE ESTATE OF HARRIETT de WITT KITTLE, DECEASED, AND SOLD DURING THE CALENDAR YEAR 1928 SUBSEQUENT TO MARCH 28, 1928.

Date of Sale	Description of Securities	Appraised Value at date of death March 28, 1926	Respondent's asserted appraised value at date of distribution May 21, 1927
1928			
Apr. 18	13 shs. Nor. Pac. Ry. Co.	$ 871.00	$ 1160.25
" 18	85 shs. Western Pac. Ry. Co. Pfd.	6715.00	4930.00
" 24	7.5M Key System 5%	6138.90	4621.88
" 26	100 shs. Wickwire Spencer	159.00	66.25
" 28	L. A. Ry. Co. 5% (1 M)	862.50	950.00
" 27	So. Calif. Edison Co. 7% Pfd. (20 shs.)	492.50	570.00
" 27	25 shs. L. A. Gas & E. Co. Pfd.	2412.50	2500.00
" 27	100 shs. Pac. Gas & El. Pfd.	2459.37	2600.00
" 28	25 shs. San Joaquin L & P Co. Pfd.	2600.00	2625.00
" 28	1M So. Counties Gas Co. 5½%	1000.00	1000.00
" 30	3.8M Natomas Co. 6%	2280.00	1486.75
May 7	63 shs. Hawaii Cons. Ry. Pfd.	504.00	504.00
June 20	25 shs. Petaluma & Santa Rosa Ry. Pfd.	2000.00	2000.00
" 20	19 shs. Ditto Com.	570.00	570.00
Dec. 18	10 shs. Std. Oil Co. of Cal.	540.00	533.75
Apr. 18	100 shs. Pacific Ltg. Co.	3321.10	3780.66
" 27	200 " " " "	6642.20	7561.32
May 27	200 " " " "	6642.20	7561.32
May 8	100 " " " "	3321.10	3780.66
Dec. 28	125 " Shell Co. rights	605.63	577.10
	Total	50137.00	49378.94

[Endorsed]: United States Board of Tax Appeals. Filed Dec. 28, 1931. [10]

[Title of Court and Cause.]

ANSWER.

Now comes the Commissioner of Internal Revenue, by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, and for answer to the petition of this taxpayer admits and denies as follows:

1, 2 and 3. Admits the allegations contained in paragraphs 1, 2 and 3.

4-(a) and (b). Denies that the Commissioner erred as stated in subparagraphs (a) and (b) of paragraph 4.

5-(a). Admits the allegations contained in paragraph 5-(a).

5-(b) to (e), inclusive. Denies the allegations contained in subparagraphs (b) to (e), inclusive, of paragraph 5.

5-(f). Admits that respondent, in making his final determination of petitioner's income tax for the calendar year 1928, computed the tax upon the net profits derived from the sale of certain stocks and bonds as a tax upon "Ordinary Net Income" and not as a tax upon "Capital Net Gain."

5-(g). Admits that respondent, in making his final determination of petitioner's income tax for the calendar year 1928, computed the [11] net profits derived from the sale of certain stocks and bonds by using as a basis thereof the value of said stocks and bonds as of the date of distribution to the petitioner. Denies all other material allegations contained in subparagraph (g) of paragraph 5.

Denies generally and specifically each and every allegation contained in the taxpayer's petition not hereinbefore admitted, qualified or denied.

WHEREFORE, it is prayed that the Board redetermine the amount of the deficiency involved in this proceeding to be equal to the amount determined by the Commissioner, plus any additional amount which may arise from the correction of any error or errors that may have been committed by the Commissioner. Claim is hereby asserted for the increased deficiency, if any, resulting from such redetermination.

(Signed) C. M. CHAREST,
General Counsel,
Bureau of Internal Revenue.

Of Counsel:
R. P. HERTZOG,
Special Attorney,
Bureau of Internal Revenue.

[Endorsed]: United States Board of Tax Appeals. Filed Feb. 10, 1932. [12]

[Title of Court and Cause.]

STIPULATION AS TO FACTS.

It is hereby stipulated by and between Isabel K. Dibblee, petitioner above named, and the Commissioner of Internal Revenue, respondent above

named, by their respective attorneys of record, that the above entitled appeal shall be heard and determined by the said United States Board of Tax Appeals upon the following agreed statement of facts, to-wit:

1. That Isabel K. Dibblee, the petitioner herein, at all times hereinafter mentioned was, and now is, a married woman, a citizen of the United States and of the State of California, and a resident of and domiciled in the Town of Ross, County of Marin, State of California.

2. That Harriette deWitt Kittle was the mother of petitioner; that said Harriette deWitt Kittle was, at the time of her death, and many years prior thereto, a citizen of the United States and of the State of California, and a resident of, and domiciled in the Town of Ross, County of Marin, State of California.

3. That the said Harriette deWitt Kittle died on the 28th day of March, 1926, in the County of Marin, State of California, leaving a last will and testament bearing date the 3rd day of February, 1907, wherein and whereby said testatrix left all of her estate of every kind and nature whatsoever, and wheresoever situate, to her four children, to-wit, Lucia Hamilton Kittle Sherman, Isabel Kittle Dibblee, petitioner herein, Allen Irving Kittle, and John Casper Kittle, share and share alike; a copy of said will, marked Exhibit A, is attached hereto and made a part hereof.

4. That on the 30th day of April, 1926, after proceedings duly and regularly taken and had in that behalf in [13] the matter of the estate of said Harriette deWitt Kittle, deceased, in the Superior Court of the State of California, in and for the County of Marin, said last will and testament of said deceased was duly and regularly admitted to probate by orde of said Superior Court.

5. That thereafter said legatees and devisees under said will of said Harriette deWitt Kittle, deceased, to whom was devised and bequeathed by said will the whole of the estate of said deceased, share and share alike, as aforesaid, did enter into a written agreement bearing date the 19th day of May, 1927, wherein and whereby said legatees and devisees did mutually agree upon a division among themselves of certain shares of stock of domestic corporations and rights to acquire stock thereof, which constituted a part of the assets of said estate, in order to effect a partition and segregation of their respective undivided one-fourth interests in and to said shares of stock and rights to acquire shares, and did consent to the distribution to each of them, respectively, of the number of said shares of stock and rights to which each of them, respectively, were entitled pursuant to said division and partition. A copy of said agreement, marked Exhibit B, is attached hereto, and made a part hereof.

6. That thereafter, to wit, on the 21st day of May, 1927, after proceedings duly and regularly

taken and had in that behalf in the matter of the estate of said Harriette deWitt Kittle, deceased, a decree of final distribution in the matter of said estate was duly given, made and entered by said Superior Court, wherein and whereby there was distributed to each of said legatees and devisees, individually, to wit, Lucia H. K. Sherman, Isabel K. Dibblee, petitioner herein, Allen I. Kittle and John C. Kittle, the number of shares of stock of domestic corporations and rights to acquire shares of stock thereof, pursuant to the provisions of said agreement of May 19, 1927, hereinabove in paragraph 5 hereof referred to, and all of the remainder of said estate, including certain bonds of domestic corporations, hereinafter in paragraph 7 hereof referred to, to said legatees and devisees, share and share alike, to wit, an equal one-fourth thereof to each of said legatees and devisees. A copy of said decree, (omitting real estate descriptions), marked Exhibit C, is attached hereto and made a part hereof.

7. That thereafter, to wit, on the 26th day of May, 1927, said legatees and devisees, to wit, Lucia H. K. Sherman, Isabel K. Dibblee, petitioner herein, Allen I. Kittle and John C. Kittle, entered into a written agreement bearing date on said day, wherein and whereby they did mutually agree upon a division and partition of the bonds of domestic corporations so distributed to them, share and share alike, to-wit, an [14] undivided one-fourth thereof to each of said legatees and devisees in and by said decree of final distribution, as hereinabove in paragraph 6 hereof set forth, and pursuant to the

terms and provisions of said division and partition of May 26, 1927, petitioner herein did receive one-fourth of all of said bonds. A copy of said agreement, marked Exhibit D, is attached hereto and made a part hereof.

8. That thereafter and during the year 1928, petitioner sold certain of the bonds and shares of stock of domestic corporations acquired by her under and by virtue of the provisions of said will of said Harriette deWitt Kittle, deceased, as hereinabove set forth, which said securities so sold by petitioner, as aforesaid, are hereinafter in paragraph 9 hereof particularly described.

9. That the amounts and descriptions of said bonds and stocks referred to in paragraph 8 hereof, the fair market value thereof at the time of death of said Harriette deWitt Kittle, deceased, the fair market value of the property at the time of distribution to the petitioner, and the date upon which petitioner sold said bonds and stocks, are as follows, to wit:

Amount	Description	Value at time of Death	Value at time of Distribution	Date of Sale
13 shrs.	Northern Pacific Railway Co.	$ 871.00	$1,160.25	4-18-28
85 do	Western Pac. Ry. Co. Pfd.	6,715.00	4,930.00	4-18-28
100 do	Wickwire Spencer Co.	159.00	66.25	4-26-28
20 do	So. Cal. Edison Co. 7% Pfd.	492.50	570.00	4-27-28
25 do	Los Angeles Gas & Elec. Co. Pfd.	2,412.50	2,500.00	4-27-28
100 do	Pac. Gas & Elec. Co. Pfd.	2,459.37	2,600.00	4-27-28
25 do	San Joaquin Lt. & Power Co. Pfd.	2,600.00	2,625.00	5-28-28
63 do	Hawaii Cons. Ry. Pfd.	504.00	504.00	6- 7-28
25 do	Petaluma & Santa Rosa Ry. Co. Pfd.	2,000.00	2,000.00	6-20-28
19 do	Petaluma & Santa Rosa Ry. Co. Com.	570.00	570.00	6-20-28
10 do	Standard Oil Co. of Calif.	540.00	533.75	12-18-28
100 do	Pacific Lighting Co.	3,321.10	3,780.66	4-18-28
200 do	Pacific Lighting Co.	6,642.20	7,561.32	4-27-28
100 do	Pacific Lighting Co.	3,321.10	3,780.66	5- 8-28
200 do	Pacific Lighting Co.	6,642.20	7,561.32	5-27-28
7.5M par val.	Key System 5% Bonds	6,138.90	4,621.88	4-24-28
1M do	Los Angeles Ry. Co. 5% Bonds	862.50	950.00	4-28-28
3.8M do	Natomas Co. 6% Bonds	2,280.00	1,486.75	4-30-28
1M do	So. Counties Gas Co. 5½% Bonds	1,000.00	1,000.00	4-28-28
	Totals	$49,531.37	$48,801.84	

10. That all of the aforesaid bonds and stocks were sold by petitioner more than two (2) years after the death of [15] her said mother, Harriette deWitt Kittle, to wit, after March 28, 1926, and less than two (2) years after the time of distribution to the petitioner, for the sum of $77,243.70.

11. On her return for the taxable year 1928, petitioner reported as capital net gain a profit on the sale of said securities, particularly described in paragraph 9 hereof, of $27,712.33, based on the value of said securities as of March 28, 1926, the date of the death of said testatrix. That the profit on the sale of said securities, based on the fair market value thereof at the time of distribution, is $28,-441.86. In the notice of deficiency respondent has included said amount of $28,441.86 as ordinary income and has computed the tax on same accordingly. A copy of said notice of deficiency, marked Exhibit E. is attached hereto and made a part hereof.

Dated: September 18, 1933.

Attorneys for Petitioner

ALBERT J. DIBBLEE,
Attorney at Law,
670 Mills Bldg., San Francisco, Cal.

GEO. E. H. SATCHELL, C. P. A.,
369 Pine Street, San Francisco, Cal.

Attorney for Respondent

(Sd.) E. BARRETT PRETTYMAN,
General Counsel,
Bureau of Internal Revenue. [16]

EXHIBIT A.

I, Harriette deWitt Kittle of Ross, Marin County, California, make this my last will and testament. I hereby revoke all former wills made by me.

All my property, real, personal and mixed, of any kind and nature whatsoever, and wheresoever situate, I give unto my four children, Lucia Hamil-

ton Kittle Sherman, Isabel Kittle Dibblee, Allen Irving Kittle, John Casper Kittle, share and share alike. I make my sons, the said Allen Irving Kittle and John Casper Kittle, executors of this will, and desire that no bond be required of them or of either of them for the performance of any duty as such executors.

I give to said executors and to which onescever may act, full power and authority to sell or lease any of the property of my estate without first applying to the court for any order so to do.

Witness my hand this third day of February, nineteen hundred and seven.

HARRIETTE deWITT KITTLE.

[Endorsed]: Filed Apr. 10, 1926.

ROB E. GRAHAM, Clerk.

By Geo. S. Jones, Deputy. [17]

EXHIBIT B.

In the Superior Court of the State of California, in and for the County of Marin.

No. 3427

In the Matter of the Estate of
Harriette deWitt Kittle,

Deceased.

CONSENT TO DISTRIBUTION OF CERTAIN STOCKS.

We, the undersigned, legatees and devisees under the will of Harriette DeWitt Kittle, deceased, to

whom was given by said will the estate of said decedent, share and share alike, in order to effect a distribution of the shares of stock in corporations, have agreed to the division and distribution by the Decree of Distribution herein of shares of stock as follows, and do hereby assign and transfer our interests therein so that such division and distribution may be made, to-wit:

300 shares of stock in California Packing Corporation.

75 shares to Lucia H. K. Sherman.
75 shares to Isabel K. Dibblee.
75 shares to Allen I. Kittle.
75 shares to John C. Kittle.

36 shares of stock in The North American Company, common.

9 shares to Lucia H. K. Sherman.
9 shares to Isabel K. Dibblee.
9 shares to Allen I. Kittle.
9 shares to John C. Kittle.

100 shares of stock, preferred, in Petaluma and Santa Rosa Railway Company.

25 shares to Lucia H. K. Sherman.
25 shares to Isabel K. Dibblee.
25 shares to Allen I. Kittle.
25 shares to John C. Kittle.

77 shares of stock, common, in Petaluma and Santa Rosa Railway Company.

19 shares to Lucia H. K. Sherman.
19 shares to Isabel K. Dibblee.
20 shares to Allen I. Kittle.
19 shares to John C. Kittle. [18]

105 shares of preferred stock in Western Power Corporation.

26 shares to Lucia H. K. Sherman.
26 shares to Isabel K. Dibblee.
26 shares to Allen I. Kittle.
27 shares to John C. Kittle.

90 shares of stock in The Morris Plan Company of San Francisco.

22 shares to Lucia H. K. Sherman.
23 shares to Isabel K. Dibblee.
22 shares to Allen I. Kittle.
23 shares to John C. Kittle.

50 shares of stock in the Northern Pacific Railway Company.

12 shares to Lucia H. K. Sherman.
13 shares to Isabel K. Dibblee.
13 shares to Allen I. Kittle.
12 shares to John C. Kittle.

(Evidenced by certificate of deposit No. F-13793 for 50 shares of the capital stock of the Northern Pacific Railway Company, deposited pursuant to agreement dated February 7, 1927.)

50 shares of stock in the Goodyear Tire & Rubber Company of California, preferred.

13 shares to Lucia H. K. Sherman.
12 shares to Isabel K. Dibblee.
12 shares to Allen I. Kittle.
13 shares to John C. Kittle.

20 shares of stock in the Herald Realty Company.
5 shares to Lucia H. K. Sherman.
5 shares to Isabel K. Dibblee.
5 shares to Allen I. Kittle.
5 shares to John C. Kittle.

20 shares of stock in the Sheldon Townsite and Realty Company.
5 shares to Lucia H. K. Sherman.
5 shares to Isabel K. Dibblee.
5 shares to Allen I. Kittle.
5 shares to John C. Kittle.

70 shares of stock in The Bank of California, National Association.
17 shares to Lucia H. K. Sherman.
17 shares to Isabel K. Dibblee.
18 shares to Allen I. Kittle.
18 shares to John C. Kittle.

121 shares of preferred stock in the Natomas Company of California.
30 shares to Lucia H. K. Sherman.
31 shares to Isabel K. Dibblee.
30 shares to Allen I. Kittle.
30 shares to John C. Kittle. [19]

300 shares of common stock in The Western Pacific Railroad Corporation.
75 shares to Lucia H. K. Sherman.
75 shares to Isabel K. Dibblee.
75 shares to Allen I. Kittle.
75 shares to John C. Kittle.

300 shares of stock in the Union Oil Company of California.

75 shares to Lucia H. K. Sherman.
75 shares to Isabel K. Dibblee.
75 shares to Allen I. Kittle.
75 shares to John C. Kittle.

Certificates representing preferred and common stock for $2,500.00 each, in the Russ Building Company, to Lucia H. K. Sherman, Isabel K. Dibblee, Allen I. Kittle and John C. Kittle.

600 shares of stock in Bankers' Investment Company.

150 shares to Lucia H. K. Sherman.
150 shares to Isabel K. Dibblee.
150 shares to Allen I. Kittle.
150 shares to John C. Kittle.

150 shares of stock in Wells Fargo Bank & Union Trust Co.

37 shares to Lucia H. K. Sherman.
38 shares to Isabel K. Dibblee.
38 shares to Allen I. Kittle.
37 shares to John C. Kittle.

100 shares of stock in Pacific Gas and Electric Company.

25 shares to Lucia H. K. Sherman.
25 shares to Isabel K. Dibblee.
25 shares to Allen I. Kittle.
25 shares to John C. Kittle.

50 shares of stock in Sherman Clay & Co.
- 12 shares to Lucia H. K. Sherman.
- 13 shares to Isabel K. Dibblee.
- 13 shares to Allen I. Kittle.
- 12 shares to John C. Kittle.

100 shares of common stock of The Atchison, Topeka and Santa Fe Railway Company.
- 25 shares to Lucia H. K. Sherman.
- 25 shares to Isabel K. Dibblee.
- 25 shares to Allen I. Kittle.
- 25 shares to John C. Kittle. [20]

50 shares of preferred stock in the Great Western Power Company of California.
- 12 shares to Lucia H. K. Sherman.
- 12 shares to Isabel K. Dibblee.
- 12 shares to Allen I. Kittle.
- 14 shares to John C. Kittle.

500 shares of common stock in the Shell Union Oil Corporation.
- 125 shares to Lucia H. K. Sherman.
- 125 shares to Isabel K. Dibblee.
- 125 shares to Allen I. Kittle.
- 125 shares to John C. Kittle.

100 shares of prior preferred stock in San Joaquin Light and Power Corporation.
- 25 shares to Lucia H. K. Sherman.
- 25 shares to Isabel K. Dibblee.
- 25 shares to Allen I. Kittle.
- 25 shares to John C. Kittle.

608 shares of common stock in Pacific Gas and Electric Company. (New stock)
152 shares to Lucia H. K. Sherman.
152 shares to Isabel K. Dibblee.
152 shares to Allen I. Kittle.
152 shares to John C. Kittle.

100 shares of preferred stock in Los Angeles Gas and Electric Corporation.
25 shares to Lucia H. K. Sherman.
25 shares to Isabel K. Dibblee.
25 shares to Allen I. Kittle.
25 shares to John C. Kittle.

30 shares of prior preferred cumulative stock in Key System Transit Company.
7 shares to Lucia H. K. Sherman.
7 shares to Isabel K. Dibblee.
7 shares to Allen I. Kittle.
9 shares to John C. Kittle.

30 shares of preferred stock in Key System Transit Company.
8 shares to Lucia H. K. Sherman.
7 shares to Isabel K. Dibblee.
7 shares to Allen I. Kittle.
8 shares to John C. Kittle.

20 shares preferred stock in Southern California Edison Company.
5 shares to Lucia H. K. Sherman.
5 shares to Isabel K. Dibblee.
5 shares to Allen I. Kittle.
5 shares to John C. Kittle. [21]

800 shares of common stock in Southern California Edison Company. (New stock)
200 shares to Lucia H. K. Sherman.
200 shares to Isabel K. Dibblee.
200 shares to Allen I. Kittle.
200 shares to John C. Kittle.

Right to subscribe for and purchase 16 shares each of Southern California Edison Company common stock, to Lucia H. K. Sherman, Allen I. Kittle and John C. Kittle.

Right to subscribe for and purchase 18-8/12ths shares of common stock of Southern California Edison Company, to Isabel K. Dibblee.

425 shares of common stock in the Wickwire Spencer Steel Company.
106 shares to Lucia H. K. Sherman.
106 shares to Isabel K. Dibblee.
107 shares to Allen I. Kittle.
106 shares to John C. Kittle.

25 shares of preferred stock in The Pacific Telephone and Telegraph Company.
6 shares to Lucia H. K. Sherman.
6 shares to Isabel K. Dibblee.
7 shares to Allen I. Kittle.
6 shares to John C. Kittle.

10 shares of the common stock of the Pacific Telephone and Telegraph Company.
3 shares to Lucia H. K. Sherman.
3 shares to Isabel K. Dibblee.
2 shares to John C. Kittle.
2 shares to Allen I. Kittle.

255 shares first class 7% preferred stock of Hawaii Consolidated Railway Limited.
63 shares to Lucia H. K. Sherman.
63 shares to Isabel K. Dibblee.
64 shares to John C. Kittle.
65 shares to Allen I. Kittle.

342 shares of preferred stock in The Western Pacific Railroad Corporation.
86 shares to Lucia H. K. Sherman.
85 shares to Isabel K. Dibblee.
86 shares to Allen I. Kittle.
85 shares to John C. Kittle.

31 shares preferred stock of California Electric Generating Company.
8 shares to Lucia H. K. Sherman.
9 shares to Isabel K. Dibblee.
7 shares to Allen I. Kittle.
7 shares to John C. Kittle. [22]

662 shares of stock in Standard Oil Company of California.
166 shares to Lucia H. K. Sherman.
166 shares to Isabel K. Dibblee.
165 shares to Allen I. Kittle.
165 shares to John C. Kittle.

200 shares of common stock of General Cigar Co.
50 shares to Lucia H. K. Sherman.
50 shares to Isabel K. Dibblee.
50 shares to Allen I. Kittle.
50 shares to John C. Kittle.

269 shares of common stock of Pacific Lighting Corporation.

68 shares to Lucia H. K. Sherman.

67 shares to Isabel K. Dibblee.

67 shares to Allen I. Kittle.

67 shares to John C. Kittle.

50 shares of Kennedy Mining and Milling Company.

12 shares to Lucia H. K. Sherman.

13 shares to Isabel K. Dibblee.

13 shares to Allen I. Kittle.

12 shares to John C. Kittle.

50 shares of stock in California Market Properties Company.

13 shares to Lucia H. K. Sherman.

12 shares to Isabel K. Dibblee.

12 shares to Allen I. Kittle.

13 shares to John C. Kittle.

Dated: May 19, 1927.

Allen I. Kittle,
Isabel K. Dibblee,
John C. Kittle,
Lucia H. K. Sherman.[23]

EXHIBIT C.

In the Superior Court of the State of California,
In and for the County of Marin.

No. 3427

In the Matter of the Estate of
Harriette deWitt Kittle,
Deceased.

ORDER SETTLING FIRST AND FINAL ACCOUNT AND DECREE OF DISTRIBUTION.

The First and Final Account and Report accompanying same, of Allen I. Kittle and John C. Kittle, executors of the last will and testament of Harriette deWitt Kittle, deceased, together with the Petition for Distribution of said executors heretofore filed herein, coming on this day regularly to be heard, and it appearing to the satisfaction of this Court, and the Court hereby finding that due notice of the settlement of said Account and of the hearing of said Petition for Distribution and of said report, has been given in all respects as required by law, and evidence oral and documentary having been introduced, and the same having been considered, and it further appearing to the satisfaction of the Court and the Court hereby finding that all and singular the allegations of said Report and Petition for Distribution are true;

And the Court further finding that since the filing of said Account there has been received by said ex-

ecutors the sum of $1,926.00, and that there has been disbursed by said executors the sum of $63.24; that all inheritance, state, county, municipal and federal taxes due and payable by said estate have been paid; that all debts payable by said estate have been paid; that all expenses of administration incurred to date have been paid; save commissions payable to said executors and the fee to their attorneys incurred as in said First and Final Account set forth, and that said executors are entitled to receive commissions as such executors in the sum of Fourteen Thousand Two Hundred Sixty-four and 45/100ths Dollars ($14,264.45), and that a similar sum should be paid to their attorneys for services in and about the administration of said estate, and that the sum of $500, Five Hundred Dollars, is a reasonable sum to be allowed as expenses incident to the closing of the administration of said estate; [24]

And it further appearing that written consent to the allowance of said First and Final Account executed by all the legatees and devisees under the will of said decedent has been given and filed herein;

And it further appearing and the Court hereby finding that by the will of said decedent Lucia Hamilton Kittle Sherman, Isabel K. Dibblee, Allen I. Kittle and John C. Kittle have been given the property of said estate share and share alike, and that as to certain shares of stock the said legatees and devisees have agreed upon distribution thereof, and have made assignments to effect the same;

And it further appearing that said estate is now in condition to be finally distributed unto the persons thereto entitled, and the administration thereof brought to a close;-

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the said First and Final Account of said Allen I. Kittle and John C. Kittle, executors of the last will and testament of Harriette deWitt Kittle, deceased, be and the same is hereby settled, allowed and approved as filed; that the said executors be and they hereby are authorized to retain the sum of Fourteen Thousand Two Hundred Sixty-four and 45/100ths Dollars ($14,-264.45); as and for their commissions as executors herein, and that they are hereby further authorized, ordered and directed to pay to their attorneys, Messrs. Myrick & Deering and Scott the sum of Fourteen Thousand, Two Hundred Sixty-four and 45/100ths Dollars, ($14,264.45), as and for their fee as attorneys for said executors in the administration of said estate;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the sum of Five Hundred (500) Dollars be and the same is hereby allowed to said executors as a reasonable sum to meet expenses incident to closing the administration of said estate;

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that there be and is hereby distributed to LUCIA H. K. SHERMAN, ISABEL K. DIBBLEE, ALLEN I. KITTLE and

JOHN C. KITTLE the following described real and personal property, share and share alike, that is, an equal one-fourth thereof to each, to wit:

Money, ... $ none

All personal property in the residence and on the property situate at Ross, Marin County, California, more particularly described in the Inventory and Appraisement on file herein, save and except the Pierce Arrow automobile heretofore sold.

REAL ESTATE.

All that certain real property, situated in the City and County of San Francisco, State of California, and described as follows, to wit:

(Here follows description of 16 parcels of real estate.) [25]

BONDS.

30 Key System Transit Company General and Refunding Mortgage Gold Bonds, $1,000.00, 5%, Series 1, due July 1, 1938.
Numbered M-569 to M-598, both inclusive.

10 $1,000.00 School Bonds of Patterson School District, Stanislaus County, California, 5% Gold Bond.

Numbered 25	Due March 11, 1938.
26 and 27,	Due March 11, 1939.
28 and 29,	Due March 11, 1940.
30 and 31,	Due March 11, 1941.
32 and 33,	Due March 11, 1942.
35	Due March 11, 1943.

5 Northwestern Electric Company, $1,000.00, 6% First Mortgage Twenty Year Sinking Fund Gold Bond, due May, 1935.
Numbered M-2964 to M-2968, inclusive.

12 City of Sao Paulo, State of Sao Paulo, Brazil, $1,000.00 6% External Secured Sinking Fund Gold Bond, principal payable November 1, 1943.
Numbered 7548 to 7559, inclusive.

10 State of Sao Paulo, Brazil, $1,000.00 Twenty-five year 8% Secured Sinking Fund Gold Bond, External Loan of 1925, due January 1, 1950.
Numbered 6473 to 6482, inclusive.

10 Reno Light, Power and Water Company, $1,000.00 6% Mortgage Sinking Fund Forty Year Gold Bond, principal due July 1, 1944.
Numbered 1 to 10 inclusive.

6 Southern Counties Gas Company of California, $1,000.00 5½% First Mortgage Twenty Year Sinking Fund Gold Bond, principal due May 1, 1936.
Numbered M-1755 to M-1760, inclusive.

9 Petaluma and Santa Rosa Railroad Company, $1,000.00 First Mortgage 5½% Twenty-five Year Sinking Fund Gold Bond, due September 1, 1943.
Numbered 110 to 112, inclusive, 205 to 209 inclusive; and 665.

17 Pacific Electric Railway Company, $1,000.00, 5% First Mortgage Gold Bond, due January 1, 1942.
Numbered 203 to 212, inclusive; 1155, 1307, 1308, 3028, 3081, 3082, 4404.

1 Post Street Investment Company, fifteen year note, $100.00, 6%, principal due April 1, 1938.
Numbered C-411. [26]

25 Great Western Power Company, $1,000.00 first mortgage, 5% Sinking Fund Forty Year Gold Bond, due July 1, 1946.
Numbered 12439 to 12453, inclusive, 5778, 2959, 7661, 14367, 20150, 20152, 20153, 20154, 16571, 20151.

10 Northern New York Power Corporation, First Mortgage, 6%, $1,000.00 Gold Bonds, principal due January 1, 1933.
Numbered 511 to 520, inclusive.

1 Wickwire Spencer Steel Company Five Year 7% Class A Note, $1,000.00, principal due February 25, 1930.

12 Natomas Company of California General and Refunding Mortgage 6% Twenty Year Gold Bonds, $1,000.00, due January 1, 1935.
Numbered M-7635 to M-7646, inclusive.

2 Natomas Company of California General and Refunding Mortgage 6% Twenty Year Gold Bond, $500.00, due January 1, 1935.
Numbered D-1012 and D-1228.

23 Natomas Company of California General and Refunding Mortgage 6% Twenty Year Gold Bonds, $100.00, due January 1, 1935.
Numbered C-3087, C-3088, C-3089, C-3090, C-4984, C-4985, C-5550, C-5551, C-5552, C-5553, C-6963, C-6964, C-6965, C-6966, C-10811, C-10812, C-10813, C-10814, C-13590.

6 Los Angeles Pacific Railroad Company of California, 5% First and Refunding Mortgage Gold Bond, $1,000.00, principal due September 1, 1943.
Numbered 2331, 3101, 3102, 3103, 3104, 3105.

9 The Western Pacific Railroad Company, $1,000.00 First Mortgage Gold Bond, Series A, 5%, principal due March 1, 1946.
Numbered M-6027 to M-6033, inclusive; M-16999, M-17000.

2 The Western Pacific Railroad Company, $100.00 First Mortgage Gold Bond, Series A, 5%, due March 1, 1946.
Numbered C-3164 and C-3165.

5 Union Iron Works Dry Dock Company, $1,000.00, 6%, Twenty Year Gold Bond, principal due October 1, 1929.
Numbered 551, 552, 554, 555, 556.

10 Liberty Farms Co. First Mortgage $1,000.00 6½% Serial Gold Bond, principal due April 1, 1933.
Numbered M-261 to M-270, inclusive.

10 Los Angeles Union Terminal Company, $1,000.00 First Mortgage 6% Serial Gold Bond, principal due November 1, 1934.
Numbered 937 to 941, inclusive, 1041 to 1045, inclusive. [27]

15 Tulare Lake Reclamation District No. 749, in the County of Kings, State of California, $1,000.00, 6% Gold Bond.
Numbered 29 to 33, inclusive, due July 1, 1931.
Numbered 101 to 105, inclusive, due July 1, 1934.
Numbered 142 to 146, inclusive, due July 1, 1935.

4 Santa Marina Building, $500.00, First Mortgage, 6% Serial Gold Bond, principal due July 1, 1937.
Numbered D-522, D-524, D-541, D-576.

5 Merchants Ice and Cold Storage Company, $1,000.00 First Mortgage 6½% Serial Gold Bond, principal due April 1, 1944.
Numbered M-1006 to M-1010 inclusive.

4 The Iowa Central Railway Company, First and Refunding Mortgage, 4% Fifty Year Gold Bond, $1,000.00, due March 1, 1951.
Numbered 2977, 2978, 2979 and 2980.

5 Bonds of the State of California, State Highway, Constitutional Amendment of 1919, $1,000.00, 4½%, dated July 3, 1919, due July 3, 1933.
Numbered 7480 to 7484, inclusive.

10 Pacific Gas and Electric Company, Series A, $1,000.00, First and Refunding Mortgage Gold Bond, 7%, due December 1, 1940.
Numbered M-1916 to M-1925, inclusive.

8 Santa Marina Building, $1,000.00 First Mortgage 6% Serial Gold Bond, principal due July 1, 1937.
Numbered M-325 to M-332, inclusive.

8 Series A Columbia Steel Corporation, $1,000.00, Fifteen Year First Mortgage 7% Sinking Fund Gold Bond, principal due February 1, 1938.
Numbered M-2661 to M-2668, inclusive.

1 Town and Country Club, $1,000.00 5% Second Mortgage Gold Bond, principal due April 1, 1933.
Numbered 27.

10 Los Angeles Gas and Electric Corporation, $1,000.00 General and Refunding Mortgage 5½% Gold Bond, Series F, due March 1, 1943.
Numbered M-1940 to M-1944, inclusive; M-2407, M-2408, M-2409, M-2298, M-2609.

5 San Francisco, Napa and Calistoga Railway, First Mortgage 6% Twenty-five Year $1,000.00 Gold Bond, principal due December 31, 1926.
Numbered 805 to 809, inclusive. [28]

4 Los Angeles Railway Corporation, $1,000.00 First and Refunding Mortgage Gold Bond, 5%, due December 1, 1940.
Numbered 10156, 10157, 10396, 10506.

10 Reclamation District No. 1004, $1,000.00 6% bond.
1 due January 1, 1933, numbered 196.
8 due January 1, 1936, numbered 373, 374, 375, 376, 362, 363, 364, 365.
1 due January 1, 1938, numbered 496.

20 San Francisco Napa and California Railway, 5% Twenty-five year Gold Debenture $500.00 bonds, principal due December 1, 1936.
Numbered 281 to 300 inclusive.

15 Pescadero Reclamation District number 2058, $1,000.00 Gold Bond, 6%.
3 due January 1, 1934, numbered 74, 75, 76.
2 due January 1, 1936, numbered 117, 118.
8 due January 1, 1939, numbered 198, 199, 200, 205, 206, 207, 218, 219.
2 due January 1, 1942, numbered 284, 285.

10 Series A, National Public Service Corporation, $1,000.00, Thirty Year 6½% Sinking Fund, Collateral Trust Gold Bond, principal due February 1, 1955.
Numbered M-6456 to M-6465, inclusive.

8 Associated Oil Company, $1,000.00 Twelve Year 6% Gold Note Principal due September 1, 1935.
Numbered 19381 to 19388, inclusive.

10 General Petroleum Corporation, $1,000.00 Five Year 6% Gold Note. Principal due April 15, 1928.
Numbered 4764M, 520M, 5900M, 5901M, 5902M, 5903M, 6446M, 7964M, 7965M, 8532M.

10 The Government of the French Republic External Loan of 1924, Twenty-five Year Sinking Fund 7% Gold Bond, $1,000.00 principal due December 1, 1949.
Numbered 53881 to 53890, inclusive.

9 Market Street Railway Company First Mortgage 7% Sinking Fund Gold Bond, Series A, $1,000.00, principal payable April 1, 1940.
Numbered M1413, M6017, M6018, M6025, M6890, M6891, M8910, M8576, M9545.

2 Market Street Railway Company First Mortgage 7% Sinking Fund Gold Bond, Series A, $500.00, Principal payable April 1, 1940.
Numbered D833, D834.

10 Walworth Company $1,000.00 First Mortgage Sinking Fund Gold Bond, Series A, 6%, principal due October 1, 1945.
Numbered M1360 to M1369, inclusive. [29]

8 State of Montana, County of Toole Irrigation District Fund Bonds, dated January 1, 1922, due January 1, 1930, Series D, $1,000.00.
Numbered 65 to 71, inclusive, and 74.

4 State of Montana, County of Toole Irrigation District Fund Bonds, dated January 1, 1922, due January 1, 1930, Series C, $500.00.
Numbered 43 to 46, inclusive.

STOCKS

187½ shares of stock in The Pioneer Real Estate Co. Evidenced by certificate number 4.

3 shares of stock in the Lagunitas Syndicate. Evidenced by certificate number 33.

111-1/9 shares of stock in Bay View Land Company. Evidenced by certificate number 32. (In the name of Allen I. Kittle, endorsed.)

350 shares of stock in the Pacific Oil Company. Evidenced by certificates numbered
S 4311 for 100 shares.
SO 2721 for 50 shares.
58006 for 100 shares.
55785 for 100 shares.

3 Association Certificates of Milk Producers Association of Central California. Evidenced by certificates numbered 2812, 2813 and 2814.

789 shares of The Natomas Land and Dredging Trust Limited. Par value 1 pound. British Corporation. Principal office London. Evidenced by certificates numbered
33 for 330 shares.
429 for 450 shares.

10 shares The Katharine Branson School, Inc., first preferred stock. Par value $100.00. Evidenced by certificate numbered 1P59.

110 shares The Central California Traction Company. Evidenced by certificate numbered 528.

80 shares Pacific Coast Casualty Company. Evidenced by certificates numbered
281 for 40 shares.
329 for 20 shares.
332 for 20 shares.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be and is hereby dis-

tributed shares of stock in corporations as follows, to wit:

300 shares of stock in California Packing Corporation.
75 shares to Lucia H. K. Sherman.
75 shares to Isabel K. Dibblee.
75 shares to Allen I. Kittle.
75 shares to John C. Kittle. [30]

36 shares of stock in The North American Company, common.
9 shares to Lucia H. K. Sherman.
9 shares to Isabel K. Dibblee.
9 shares to Allen I. Kittle.
9 shares to John C. Kittle.

100 shares of stock, preferred, in Petaluma and Santa Rosa Railway Company.
25 shares to Lucia H. K. Sherman.
25 shares to Isabel K. Dibblee.
25 shares to Allen I. Kittle.
25 shares to John C. Kittle.

77 shares of stock, common, in Petaluma and Santa Rosa Railway Company.
19 shares to Lucia H. K. Sherman.
19 shares to Isabel K. Dibblee.
20 shares to Allen I. Kittle.
19 shares to John C. Kittle.

105 shares of preferred stock in Western Power Corporation.
26 shares to Lucia H. K. Sherman.
26 shares to Isabel K. Dibblee.
26 shares to Allen I. Kittle.
27 shares to John C. Kittle.

90 shares of stock in The Morris Plan Company of San Francisco.
22 shares to Lucia H. K. Sherman.
23 shares to Isabel K. Dibblee.
22 shares to Allen I. Kittle.
23 shares to John C. Kittle.

50 shares of stock in the Northern Pacific Railway Company.
12 shares to Lucia H. K. Sherman.
13 shares to Isabel K. Dibblee.
13 shares to Allen I. Kittle.
12 shares to John C. Kittle.
(Evidenced by certificate of deposit No. F-13793 for 50 shares of the capital stock of the Northern Pacific Railway Company, deposited pursuant to agreement dated February 7, 1927.)

50 shares of stock in the Goodyear Tire & Rubber Company of California, preferred.
13 shares to Lucia H. K. Sherman.
12 shares to Isabel K. Dibblee.
12 shares to Allen I. Kittle.
13 shares to John C. Kittle.

20 shares of stock in the Herald Realty Company.
5 shares to Lucia H. K. Sherman.
5 shares to Isabel K. Dibblee.
5 shares to Allen I. Kittle.
5 shares to John C. Kittle. [31]

20 shares of stock in the Sheldon Townsite and Realty Company.
5 shares to Lucia H. K. Sherman.
5 shares to Isabel K. Dibblee.
5 shares to Allen I. Kittle.
5 shares to John C. Kittle.

70 shares of stock in The Bank of California, National Association.
- 17 shares to Lucia H. K. Sherman.
- 17 shares to Isabel K. Dibblee.
- 18 shares to Allen I. Kittle.
- 18 shares to John C. Kittle.

121 shares of preferred stock in the Natomas Company of California.
- 30 shares to Lucia H. K. Sherman.
- 31 shares to Isabel K. Dibblee.
- 30 shares to Allen I. Kittle.
- 30 shares to John C. Kittle.

300 shares of common stock in The Western Pacific Railroad Corporation.
- 75 shares to Lucia H. K. Sherman.
- 75 shares to Isabel K. Dibblee.
- 75 shares to Allen I. Kittle.
- 75 shares to John C. Kittle.

300 shares of stock in the Union Oil Company of California.
- 75 shares to Lucia H. K. Sherman.
- 75 shares to Isabel K. Dibblee.
- 75 shares to Allen I. Kittle.
- 75 shares to John C. Kittle.

Certificates representing preferred and common stock for $2,500.00 each, in the Russ Building Com-

pany, to Lucia H. K. Sherman, Isabel K. Dibblee, Allen I. Kittle, and John C. Kittle.

600 shares of stock in Bankers' Investment Company.
- 150 shares to Lucia H. K. Sherman.
- 150 shares to Isabel K. Dibblee.
- 150 shares to Allen I. Kittle.
- 150 shares to John C. Kittle.

150 shares of stock in Wells Fargo Bank & Union Trust Co.
- 37 shares to Lucia H. K. Sherman.
- 38 shares to Isabel K. Dibblee.
- 38 shares to Allen I. Kittle.
- 37 shares to John C. Kittle.

100 shares of stock in Pacific Gas and Electric Company.
- 25 shares to Lucia H. K. Sherman.
- 25 shares to Isabel K. Dibblee.
- 25 shares to Allen I. Kittle.
- 25 shares to John C. Kittle. All first preferred. [32]

50 shares of stock in Sherman Clay & Co.
- 12 shares to Lucia H. K. Sherman.
- 13 shares to Isabel K. Dibblee.
- 13 shares to Allen I. Kittle.
- 12 shares to John C. Kittle.

100 shares of common stock of The Atchison, Topeka and Santa Fe Railway Company.
- 25 shares to Lucia H. K. Sherman.
- 25 shares to Isabel K. Dibblee.
- 25 shares to Allen I. Kittle.
- 25 shares to John C. Kittle.

500 shares of common stock in the Shell Union Oil Corporation.
125 shares to Lucia H. K. Sherman.
125 shares to Isabel K. Dibblee.
125 shares to Allen I. Kittle.
125 shares to John C. Kittle.

50 shares of preferred stock in the Great Western Power Company of California.
12 shares to Lucia H. K. Sherman.
12 shares to Isabel K. Dibblee.
12 shares to Allen I. Kittle.
14 shares to John C. Kittle.

100 shares of prior preferred stock in San Joaquin Light and Power Corporation.
25 shares to Lucia H. K. Sherman.
25 shares to Isabel K. Dibblee.
25 shares to Allen I. Kittle.
25 shares to John C. Kittle.

608 shares of common stock in Pacific Gas and Electric Company. (New stock)
152 shares to Lucia H. K. Sherman.
152 shares to Isabel K. Dibblee.
152 shares to Allen I. Kittle.
152 shares to John C. Kittle.

100 shares of preferred stock in Los Angeles Gas and Electric Corporation.
25 shares to Lucia H. K. Sherman.
25 shares to Isabel K. Dibblee.
25 shares to Allen I. Kittle.
25 shares to John C. Kittle.

30 shares of prior preferred cumulative stock in Key System Transit Company.
- 7 shares to Lucia H. K. Sherman.
- 7 shares to Isabel K. Dibblee.
- 7 shares to Allen I. Kittle.
- 9 shares to John C. Kittle. [33]

30 shares of preferred stock in Key System Transit Company.
- 8 shares to Lucia H. K. Sherman.
- 7 shares to Isabel K. Dibblee.
- 7 shares to Allen I. Kittle.
- 8 shares to John C. Kittle.

20 shares preferred stock in Southern California Edison Company.
- 5 shares to Lucia H. K. Sherman.
- 5 shares to Isabel K. Dibblee.
- 5 shares to Allen I. Kittle.
- 5 shares to John C. Kittle.

800 shares of common stock in Southern California Edison Company. (New stock)
- 200 shares to Lucia H. K. Sherman.
- 200 shares to Isabel K. Dibblee.
- 200 shares to Allen I. Kittle.
- 200 shares to John C. Kittle.

Right to subscribe for and purchase 16 shares each of Southern California Edison Company common stock, to Lucia H. K. Sherman, Allen I. Kittle and John C. Kittle.

Right to subscribe for and purchase 18-8/12ths shares of common stock of Southern California Edison Company, to Isabel K. Dibblee.

425 shares of common stock in the Wickwire Spencer Steel Company.
106 shares to Lucia H. K. Sherman.
106 shares to Isabel K. Dibblee.
107 shares to Allen I. Kittle.
106 shares to John C. Kittle.

25 shares of preferred stock in The Pacific Telephone and Telegraph Company.
6 shares to Lucia H. K. Sherman.
6 shares to Isabel K. Dibblee.
7 shares to Allen I. Kittle.
6 shares to John C. Kittle.

10 shares of the common stock of the Pacific Telephone and Telegraph Company.
3 shares to Lucia H. K. Sherman.
3 shares to Isabel K. Dibblee.
2 shares to John C. Kittle.
2 shares to Allen I. Kittle.

255 shares first class 7% preferred stock of Hawaii Consolidated Railway Limited.
63 shares to Lucia H. K. Sherman.
63 shares to John C. Kittle.
64 shares to John C. Kittle.
63 shares to Allen I. Kittle. [34]

342 shares of preferred stock in The Western Pacific Railroad Corporation.
86 shares to Lucia H. K. Sherman.
85 shares to Isabel K. Dibblee.
86 shares to Allen I. Kittle.
85 shares to John C. Kittle.

31 shares preferred stock of California Electric Generating Company.
- 8 shares to Lucia H. K. Sherman.
- 9 shares to Isabel K. Dibblee.
- 7 shares to Allen I. Kittle.
- 7 shares to John C. Kittle.

662 shares of stock in Standard Oil Company of California.
- 166 shares to Lucia H. K. Sherman.
- 166 shares to Isabel K. Dibblee.
- 165 shares to Allen I. Kittle.
- 165 shares to John C. Kittle.

200 shares of common stock of General Cigar Co.
- 50 shares to Lucia H. K. Sherman.
- 50 shares to Isabel K. Dibblee.
- 50 shares to Allen I. Kittle.
- 50 shares to John C. Kittle.

269 shares of common stock of Pacific Lighting Corporation.
- 68 shares to Lucia H. K. Sherman.
- 67 shares to Isabel K. Dibblee.
- 67 shares to Allen I. Kittle.
- 67 shares to John C. Kittle.

50 shares of Kennedy Mining and Milling Company.
- 12 shares to Lucia H. K. Sherman.
- 13 shares to Isabel K. Dibblee.
- 13 shares to Allen I. Kittle.
- 12 shares to John C. Kittle.

50 shares of stock in California Market Properties Company.

13 shares to Lucia H. K. Sherman.

12 shares to Isabel K. Dibblee.

12 shares to Allen I. Kittle.

13 shares to John C. Kittle.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all other property of every kind and nature whatsoever, and wheresoever situate, whether now known or discovered or not, and all property hereafter discovered, which may belong to said decedent, or to said estate, or in which the said decedent or said estate may have any interest, is hereby distributed share and share alike to LUCIA H. K. SHERMAN, ISABEL K. DIBBLEE, ALLEN I. KITTLE and JOHN C. KITTLE. [35]

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon compliance by said executors with this Decree, and the production to this Court of satisfactory evidence of such compliance, said executors be discharged from all further duty and responsibility as such.

Done in open Court this 21st day of May, 1927.

EDWARD I. BUTLER,
Judge of said Superior Court.

[Endorsed]: Filed May 21, 1927. Rob. E. Graham, Clerk. By Geo. S. Jones, Deputy. [36]

EXHIBIT D.

In the Superior Court of the State of California, in and for the County of Marin.

No. 3427

In the Matter of the Estate of Harriette deWitt Kittle,

Deceased.

We, the undersigned distributees under the Decree of Distribution in the matter of the estate of Harriette deWitt Kittle, deceased, hereby agree upon the division as hereinafter set forth of the bonds ordered distributed to us by said Decree, and further hereby acknowledge that bonds in accordance with said agreement have been delivered to us this 26th day of May, 1927, as follows:

30 Key System Transit Company General and Refunding Mortgage Gold Bonds, $1,000.00, 5%, Series 1, due July 1, 1938.

7 bonds to Lucia H. K. Sherman.
8 bonds to Isabel K. Dibblee.
8 bonds to Allen I. Kittle.
7 bonds to John C. Kittle.

10 $1,000.00 School Bonds of Patterson School District, Stanislaus County, California, 5% Gold Bond.

3 bonds to Lucia H. K. Sherman.
3 bonds to Isabel K. Dibblee.
2 bonds to Allen I. Kittle.
2 bonds to John C. Kittle. [37]

5 Northwestern Electric Company, $1,000.00, 6% First Mortgage Twenty Year Sinking Fund Gold Bond, due May, 1935.
1 bond to Lucia H. K. Sherman.
1 bond to Isabel K. Dibblee.
2 bonds to Allen I. Kittle.
1 bond to John C. Kittle.

12 City of Sao Paulo, State of Sao Paulo, Brazil, $1,000.00 6% External Secured Sinking Fund Gold Bond.
3 bonds to Lucia H. K. Sherman.
3 bonds to Isabel K. Dibblee.
3 bonds to Allen I. Kittle.
3 bonds to John C. Kittle.

10 State of Sao Paulo, Brazil, $1,000.00 Twenty-five year 8% Secured Sinking Fund Gold Bond. External Loan of 1925, due January 1, 1950.
2 bonds to Lucia H. K. Sherman.
3 bonds to Isabel K. Dibblee.
2 bonds to Allen I. Kittle.
3 bonds to John C. Kittle.

10 Reno Light, Power and Water Company, $1,000.00, 6% Mortgage Sinking Fund Forty Year Gold Bond, principal due July 1, 1944.
3 bonds to Lucia H. K. Sherman.
2 bonds to Isabel K. Dibblee.
2 bonds to Allen I. Kittle.
3 bonds to John C. Kittle.

6 Southern Counties Gas Company of California, $1,000.00 5½% First Mortgage Twenty Year Sinking Fund Gold Bond, principal due May 1, 1936.

1 bond to Lucia H. K. Sherman.
1 bond to Isabel K. Dibblee.
2 bonds to Allen I. Kittle.
2 bonds to John C. Kittle.

9 Petaluma and Santa Rosa Railroad Company, $1,000.00 First Mortgage 5½% Twenty-five Year Sinking Fund Gold Bond, due September 1, 1943.

2 bonds to Lucia H. K. Sherman.
2 bonds to Isabel K. Dibblee.
3 bonds to Allen I. Kittle.
2 bonds to John C. Kittle.

17 Pacific Electric Railway Company, $1,000.00 5% First Mortgage Gold Bond, due January 1, 1942.

4 bonds to Lucia H. K. Sherman.
5 bonds to Isabel K. Dibblee.
4 bonds to Allen I. Kittle.
4 bonds to John C. Kittle. [38]

1 Post Street Investment Company, fifteen year note, $100.00, 6%, principal due April 1, 1938.

1 bond to Allen I. Kittle.

25 Great Western Power Company, $1,000.00 first mortgage, 5% Sinking Fund Forty Year Gold Bond, due July 1, 1946.

6 bonds to Lucia H. K. Sherman.
6 bonds to Isabel K. Dibblee.
6 bonds to Allen I. Kittle.
7 bonds to John C. Kittle.

10 Northern New York Power Corporation, First Mortgage, 6%, $1,000.00 Gold Bonds, principal due January 1, 1933.

2 bonds to Lucia H. K. Sherman.

2 bonds to Isabel K. Dibblee.

3 bonds to Allen I. Kittle.

3 bonds to John C. Kittle.

1 Wickwire Spencer Steel Company Five year 7% Class A Note, $1,000.00, principal due February 25, 1930.

1 bond to John C. Kittle.

12 Natomas Company of California General and Refunding Mortgage 6% Twenty Year Gold Bonds, $1,000.00, due January 1, 1935.

3 bonds to Lucia H. K. Sherman.

3 bonds to Isabel K. Dibblee.

3 bonds to Allen I. Kittle.

3 bonds to John C. Kittle.

2 Natomas Company of California General and Refunding Mortgage 6% Twenty Year Gold Bond, $500.00, due January 1, 1935.

1 bond to Allen I. Kittle.

1 bond to John C. Kittle.

23 Natomas Company of California General and Refunding Mortgage 6% Twenty Year Gold Bonds, $100.00 due January 1, 1935.

9 bonds to Lucia H. K. Sherman.

8 bonds to Isabel K. Dibblee.

3 bonds to Allen I. Kittle.

3 bonds to John C. Kittle.

6 Los Angeles Pacific Railroad Company of California, 5% First and Refunding Mortgage Gold Bonds, $1,000.00, principal due September 1, 1943.

2 bonds to Lucia H. K. Sherman.
2 bonds to Isabel K. Dibblee.
1 bond to Allen I. Kittle.
1 bond to John C. Kittle. [39]

9 The Western Pacific Railroad Company, $1,000.00 First Mortgage Gold Bond, Series A, 5%, principal due March 1, 1946.

2 bonds to Lucia H. K. Sherman.
3 bonds to Isabel K. Dibblee.
2 bonds to Allen I. Kittle.
2 bonds to John C. Kittle.

2 The Western Pacific Railroad Company, $100.00 First Mortgage Gold Bond, Series A, 5%, due March 1, 1946.

2 bonds to Isabel K. Dibblee.

5 Union Iron Works Dry Dock Company, $1,000.00, 6% Twenty Year Gold Bond, principal due October 1, 1929.

1 bond to Lucia H. K. Sherman.
1 bond to Isabel K. Dibblee.
1 bond to Allen I. Kittle.
2 bonds to John C. Kittle.

10 Liberty Farms Co. First Mortgage $1,000.00 6½% Serial Gold Bond, principal due April 1, 1933.

4 bonds to Lucia H. K. Sherman.
2 bonds to Isabel K. Dibblee.
2 bonds to Allen I. Kittle.
2 bonds to John C. Kittle.

Los Angeles Union Terminal Company, $1,000.00 First Mortgage 6% Serial Gold Bond, principal due November 1, 1934.

2 bonds to Lucia H. K. Sherman.
2 bonds to Isabel K. Dibblee.
3 bonds to Allen I. Kittle.
3 bonds to John C. Kittle.

Tulare Lake Reclamation District No. 749, in the County of Kings, State of California, $1,000.00, 6% Gold Bond.

5 bonds to Lucia H. K. Sherman.
4 bonds to Isabel K. Dibblee.
3 bonds to Allen I. Kittle.
3 bonds to John C. Kittle.

Santa Marina Building, $1,000.00, First Mortgage 6% Serial Gold Bond, principal due July 1, 1937.

2 bonds to Lucia H. K. Sherman.
2 bonds to Isabel K. Dibblee.
2 bonds to Allen I. Kittle.
2 bonds to John C. Kittle.

Santa Marina Building, $500.00, First Mortgage 6% Serial Gold Bond, principal due July 1, 1937.

1 bond to Lucia H. K. Sherman.
1 bond to Isabel K. Dibblee.
1 bond to Allen I. Kittle.
1 bond to John C. Kittle. [40]

5 Merchants Ice and Cold Storage Company, $1,000.00 First Mortgage 6½% Serial Gold Bond, principal due April 1, 1944.

1 bond to Lucia H. K. Sherman.

2 bonds to Isabel K. Dibblee

1 bond to Allen I. Kittle.

1 bond to John C. Kittle.

4 The Iowa Central Railway Company, First and Refunding Mortgage, 4%. Fifty Year Gold Bond, $1,000.00, due March 1, 1951.

1 bond to Lucia H. K. Sherman.

1 bond to Isabel K. Dibblee.

1 bond to Allen I. Kittle.

1 bond to John C. Kittle.

5 Bonds of the State of California, State Highways, Constitutional Amendment of 1919, $1,000.00, 4½%, dated July 3, 1919, due July 3, 1933.

1 bond to Lucia H. K. Sherman.

2 bonds to Isabel K. Dibblee.

1 bond to Allen I. Kittle.

1 bond to John C. Kittle.

10 Pacific Gas and Electric Company, Series A, $1,000.00, First and Refunding Mortgage Gold Bond, 7%, due December 1, 1940.

3 bonds to Lucia H. K. Sherman.

2 bonds to Isabel K. Dibblee.

3 bonds to Allen I. Kittle.

2 bonds to John C. Kittle.

8 Series A Columbia Steel Corporation, $1,000.00, Fifteen Year First Mortgage 7% Sinking Fund Gold Bond, principal due February 1, 1938.
2 bonds to Lucia H. K. Sherman.
2 bonds to Isabel K. Dibblee.
2 bonds to Allen I. Kittle.
2 bonds to John C. Kittle.

1 Town and Country Club, $1,000.00 5% Second Mortgage Gold Bond, Principal due April 1, 1933.
1 bond to Isabel K. Dibblee.

10 Los Angeles Gas and Electric Corporation, $1,000.00 General and Refunding Mortgage 5½% Gold Bond, Series F, due March 1, 1943.
3 bonds to Lucia H. K. Sherman.
2 bonds to Isabel K. Dibblee.
3 bonds to Allen I. Kittle.
2 bonds to John C. Kittle. [41]

5 San Francisco, Napa and Calistoga Railway, First Mortgage 6% Twenty-five Year $1,000.00 Gold Bond, principal due December 31, 1926.
1 bond to Lucia H. K. Sherman.
1 bond to Isabel K. Dibblee.
2 bonds to Allen I. Kittle.
1 bond to John C. Kittle.

4 Los Angeles Railway Corporation, $1,000.00 First and Refunding Mortgage Gold Bond, 5%, due December 1, 1940.
1 bond to Lucia H. K. Sherman.
1 bond to Isabel K. Dibblee.
1 bond to Allen I. Kittle.

10 Reclamation District No. 1004, $1,000.00 6% bond.
2 bonds to Lucia H. K, Sherman.
3 bonds to Isabel K. Dibblee.
3 bonds to Allen I. Kittle.
2 bonds to John C. Kittle.

20 San Francisco, Napa and Calistoga Railway, 5% Twenty-five year Gold Debenture $500.00 bonds, principal due December 1, 1936.
5 bonds to Lucia H. K. Sherman.
5 bonds to Isabel K. Dibblee.
5 bonds to Allen I. Kittle.
5 bonds to John C. Kittle.

15 Pescadero Reclamation District Number 2058, $1,000.00 Gold Bond, 6%.
4 bonds to Lucia H. K. Sherman.
3 bonds to Isabel K. Dibblee.
4 bonds to Allen I. Kittle.
4 bonds to John C. Kittle.

10 Series A, National Public Service Corporation, $1,000.00, Thirty Year 6½% Sinking Fund, Collateral Trust Gold Bond, principal due February 1, 1955.
3 bonds to Lucia H. K. Sherman.
2 bonds to Isabel K. Dibblee.
3 bonds to Allen I. Kittle.
2 bonds to John C. Kittle.

8 Associated Oil Company, $1,000.00 Twelve Year 6% Gold Note, Principal due September 1, 1935.
2 bonds to Lucia H. K. Sherman.
2 bonds to Isabel K. Dibblee.
2 bonds to Allen I. Kittle.
2 bonds to John C. Kittle.

10 General Petroleum Corporation, $1,000.00 Five Year 6% Gold Note, Principal due April 15, 1928.

2 bonds to Lucia H. K. Sherman.
3 bonds to Isabel K. Dibblee.
2 bonds to Allen I. Kittle.
3 bonds to John C. Kittle. [42]

10 The Government of the French Republic External Loan of 1924, Twenty-five Year Sinking Fund 7% Gold Bond, $1,000.00, principal due December 1, 1949.

2 bonds to Lucia H. K. Sherman.
2 bonds to Isabel K. Dibblee.
3 bonds to Allen I. Kittle.
3 bonds to John C. Kittle.

9 Market Street Railway Company First Mortgage 7% Sinking Fund Gold Bond, Series A, $1,000.00, principal payable April 1, 1940.

3 bonds to Lucia H. K. Sherman.
2 bonds to Isabel K. Dibblee.
2 bonds to Allen I. Kittle.
2 bonds to John C. Kittle.

2 Market Street Railway Company First Mortgage 7% Sinking Fund Gold Bond, Series A, $500.00, principal payable April 1, 1940.

2 bonds to Isabel K. Dibblee.

10 Walworth Company $1,000.00 First Mortgage Sinking Fund Gold Bond, Series A, 6%, principal due October 1, 1945.

2 bonds to Lucia H. K. Sherman.
2 bonds to Isabel K. Dibblee.
2 bonds to Allen I. Kittle.
4 bonds to John C. Kittle.

8 State of Montana, County of Toole Irrigation District Fund Bonds, dated January 1, 1922, due January 1, 1930, Series D, $1,000.00.

2 bonds to Lucia H. K. Sherman.

2 bonds to Isabel K. Dibblee.

2 bonds to Allen I. Kittle.

2 bonds to John C. Kittle.

4 State of Montana, County of Toole Irrigation District Fund Bonds, dated January 1, 1922, due January 1, 1930, Series C, $500.00.

1 bond to Lucia H. K. Sherman.

1 bond to Isabel K. Dibblee.

1 bond to Allen I. Kittle.

1 bond to John C. Kittle.

Checks to equalize said distribution have been received by us respectively in the amounts set opposite our respective names:

Lucia H. K. Sherman	$196.00
Isabel K. Dibblee	40.50
Allen I. Kittle	87.50

Lucia H. K. Sherman
John C. Kittle
Isabel K. Dibblee by B. H. D.
Allen I. Kittle. [43]

EXHIBIT E.

NP-2-28

TREASURY DEPARTMENT
Washington

Office of
Commissioner of Internal Revenue
Address Reply to
Commissioner of Internal Revenue
and refer to Nov. 3, 1931

Mrs. Isabel K. Dibblee,
Hill Road,
Ross, California

Madam:

You are advised that the determination of your tax liability for the year 1928 discloses a deficiency of $1,690.30, as shown in the statement attached.

In accordance with section 272 of the Revenue Act of 1928, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of your tax liability.

HOWEVER, IF YOU DO NOT DESIRE TO PETITION, you are requested to execute the enclosed agreement form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this agreement will expedite the closing of your return by permitting an early assessment of any deficiency and preventing the accumulation of interest charges, since the interest period terminates thirty

days after filing the enclosed agreement, or on the date assessment is made, whichever is earlier; WHEREAS IF NO AGREEMENT IS FILED, interest will accumulate to the date of assessment of the deficiency.

Respectfully,
DAVID BURNET,
Commissioner.
By J. C. WILMER
Deputy Commissioner.

Enclosures:
Statement
Form 882
Form 870 [44]

STATEMENT

IT:AR:E-1
EEW-60D

In re: Mrs. Isabel K. Dibblee,
Hill Road,
Ross, California.

Tax Liability

Year	Tax Liability	Tax Assessed	Deficiency
1928	$8,329.10	$6,638.80	$1,690.30

Reference is made to your income tax return for the year 1928, in connection with the report of the internal revenue agent in charge, San Francisco, California, covering an examination of your books of account and records for the year in question.

Reference is also made to a conference held in the office of the internal revenue agent on April 17,

1930, in connection with your protest of April 9, 1930.

The principal issue involved is whether or not tax should be computed at 12½% under the capital net gain provision on gain derived from sale of certain securities acquired by inheritance.

Stocks and bonds sold in 1928 were inherited by general bequest from your mother's estate. The personal property was distributed May 21, 1927.

In the computation of tax you used the appraised value of the securities in question at date of the death of your mother, March 28, 1926, for the purpose of establishing the two-year period required under the capital net gain provisions of section 101 of the Revenue Act of 1928.

It is held that in the case of personal property acquired by general bequest the two-year period contemplated by the capital net gain provisions of the Revenue Act of 1928, commences to run from the date of distribution. The findings of the revenue agent are, therefore, sustained.

Earned income credit has been determined in accordance with the decision of the Circuit Court of Appeals for the Fifth Circuit in the case of McLarry v. Commissioner (30 Fed. (2d) 789), that is, where husband and wife render separate income tax returns on the community basis, the wife may within the limitations provided in section 209 (a)(3) of the Revenue Act of 1926 and section 31(a) of the Revenue Act of 1928, treat as earned income one-half of the salaries, wages and other income of the husband which constitutes income re-

ceived for personal services actually rendered by him. [45]

Earned income has been increased from $5,000.00 to $16,130.70 and earned income credit increased from $22.50 to $167.61.

The changes in income are as follows:

Net income reported on return (not including capital net gain)		$38,454.61
Add:		
1. Ordinary income increased		28,408.61
Total ordinary income		$66,863.22
Capital net gain reported	$32,504.14	
Capital net gain corrected	4,773.70	4,773.70
Adjusted net income		$71,636.92

Computation of Tax

Adjusted net income	$71,636.92
Less:	
Capital net gain	4,773.70
Income subject to surtax	$66,863.22
Less:	
Dividends	13,425.80
Income subject to normal tax	$53,437.42
Normal tax at 1½% on $4,000.00	$ 60.00
Normal tax at 3% on $4,000.00	120.00
Normal tax at 5% on $45,437.42	2,271.87
Surtax on $66,863.22	5,526.75
Tax at 12½% on capital net gain of $4,773.70	596.71
Total tax	$ 8,575.33

Less:		
Earned income credit	$167.61	
Tax paid at source	78.62	246.23
Tax Liability		$ 8,329.10
Tax assessed		6,638.80
Deficiency in tax		$ 1,690.30

[46]

Computation of Earned Income Credit

Earned net income	$16,130.70
Personal exemption claimed by husband	None
Normal tax at 1½% on $4,000.00	$ 60.00
Normal tax at 3% on $4,000.00	120.00
Normal tax at 5% on $8,130.70	406.53
Surtax on $16,130.70	83.92
Total tax	$ 670.45
Credit of 25%	$ 167.61

Explanation of Changes

See explanation above.

You are advised that a copy of this communication has been transmitted to your attorney, Mr. Whitney B. Sanders, 351 California Street, San Francisco, California, who has on file in this office a duly authorized power of attorney.

[Endorsed]: United States Board of Tax Appeals. Filed Sept. 25, 1933. [47]

[Title of Court and Cause.]

Docket No. 61036.

Promulgated February 13, 1934.

Petitioner acquired certain stocks and bonds by general bequest under the will of her mother, who died on March 28, 1926. These securities were distributed to the petitioner under a decree of final distribution dated May 21, 1927, and were sold by her on certain dates extending from April 18 to December 18, 1928. In her return for 1928 petitioner reported the profit from the sales as capital net gain. The respondent included the profit as ordinary income, upon the ground that the securities had been held by the petitioner for a period of less than two years. *Held,* the respondent correctly determined that the date of distribution establishes the beginning of the period the securities were held by the petitioner, within the meaning of section 101 of the Revenue Act of 1928, and the petitioner is not entitled to report as capital net gain the profit from the sales of these securities.

Albert J. Dibblee, Esq., for the petitioner.
H. D. Thomas, Esq., for the respondent.

OPINION.

MATTHEWS: The respondent has determined a deficiency in income tax for the year 1928 in the amount of $1,690.30. Petitioner alleges that re-

spondent erred in determining that the two-year period contemplated by the "Capital Net Gain" provision of section 101 of the Revenue Act of 1928 commenced to run from the date of distribution to her of certain stocks which she had acquired by general bequest under the will of her deceased mother, and not from the date of her mother's death. The parties have filed a stipulation, from which we summarize the pertinent facts as follows:

Petitioner is an individual, residing at Ross, in Marin County, California. Her mother died testate on March 28, 1926, and in her will disposed of her property, leaving "All my property, real, personal and mixed, of any kind and nature whatsoever, and wherever situate, * * * unto my four children, Lucia Hamilton Kittle Sherman, Isabel Kittle Dibblee, Allen Irving Kittle, and John Casper Kittle, share and share alike." The will was duly probated and [48] the estate distributed under a decree of final distribution dated May 21, 1927, the petitioner receiving one fourth of certain stocks and bonds so distributed from the estate of her mother. Thereafter and on certain dates extending from April 18 to December 18, 1928, petitioner sold some of the securities thus acquired. These sales were made more than two years after the death of her mother, but less than two years after the date of the distribution to the petitioner of the property sold. In her income tax return for 1928 petitioner reported the profit from such sales as capital net gain in the amount of $27,712.33, based on the value of the se-

curities at March 28, 1926. The profit based on fair market value at the time of distribution is $28,441.86. Upon audit of the return the respondent included this latter amount as ordinary income and determined the deficiency in controversy.

Although it is alleged in the petition that respondent erroneously computed income from the sales in question on the basis of the value of the securities sold at the date of their distribution, petitioner has accepted the respondent's computation of profit as in conformity with the provisions of section 113 (a) (5) of the Revenue Act of 1928, as follows:

> Sec. 113. (a) (5) Property Transmitted at Death.—If personal property was acquired by specific bequest, or if real property was acquired by general or specific devise or by intestacy, the basis shall be the fair market value of the property at the time of the death of the decedent. If the property was acquired by the decedent's estate from the decedent, the basis in the hands of the estate shall be the fair market value of the property at the time of the death of the decedent. *In all other cases if the property was acquired either by will or by intestacy, the basis shall be the fair market value of the property at the time of the distribution to the taxpayer.* * * * [Italics supplied.]

It is still contended by the petitioner, however, that this profit of $28,441.86 should be treated as

capital net gain under the provisions of section 101 of the Revenue Act of 1928, set out in the margin,[1] on [49] the theory that petitioner acquired the securities in question at the date of her mother's death and that they were held by her for more than two years before they were sold. It is admitted that she did not hold these securities for more than two years

---

[1] Sec. 101. (a) Tax in case of capital net gain.—In the case of any taxpayer, other than a corporation, who for any taxable year derives a capital net gain (as hereinafter defined in this section), there shall, at the election of the taxpayer, be levied, collected, and paid, in lieu of all other taxes imposed by this title, a tax determined as follows: A partial tax shall first be computed upon the basis of the ordinary net income at the rates and in the manner as if this section had not been enacted and the total tax shall be this amount plus 12½ per centum of the capital net gain.

* * * * * * *

(c) Definitions.—For the purposes of this title— * * *

* * * * * * *

(8) "Capital assets" means property held by the taxpayer for more than two years (whether or not connected with his trade or business) * * *. For the purposes of this definition—

* * * * * * *

(B) In determining the period for which the taxpayer has held property however acquired there shall be included the period for which such property was held by any other person, if under the provisions of section 113, such property has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in his hands as it would have in the hands of such other person.

after they were distributed to her, but the petitioner insists that the basic date for determining gain, under section 113 (a) (5), supra, is not necessarily the basic date for computing the running of the two-year period specified in section 101. Thus the petitioner urges that, although the value of the securities at the date of distribution is the correct basis for determining the amount of the gain from the sale thereof, it is the date of the death of the petitioner's mother which establishes the beginning of the period the securities were held by petitioner.

Petitioner has directed our attention to the laws of California, under which title to personal property transmitted by will vests in the legatee immediately upon the testator's death (secs. 28, 300, and 581 of the Probate Code.) Reliance is placed upon the case of Murphy v. Crouse, 135 Cal. 14, in which the Supreme Court of California held that both real and personal property descend directly to the beneficiary named in the will, with a qualified right in the personal representative who holds the property for purposes of administration, and it is pointed out that an undivided one-fourth interest in the estate of her mother vested in the petitioner in the instant case on March 28, 1926, the date of her mother's death. It does not follow, however, that from the moment of her mother's death the petitioner began holding one fourth of the specific assets of the estate. All of the decedent's property went into the possession of the executors and was chargeable with the expenses of administering the estate and the payment of debts. Clearly the petitioner

had no dominion or control over, and could not have sold, any of the particular assets until there had been a division of the estate among herself and the other legatees and certain specific assets had been delivered over to her. We cannot agree with the petitioner's contention that the issue before us for determination, which involves the taxable gain from the sale of certain securities, is governed by the laws of California with respect to the passing of legal title to property transmitted by will. In our opinion we must look to the provisions of the Federal taxing statutes. We have already shown that, under section 113 (a) (5), it is not the value of the property on the date she acquired legal title thereto, but the value on the date the securities were distributed to the petitioner, which is used as the basis for computing gain. It would be a forced construction of the statute to say that the date of distribution should not also be taken as the starting point for determining the period the securities were held by the petitioner. [49]

The securities in question were sold by the petitioner during the taxable year 1928, between April and December. Petitioner had acquired the securities by general bequest under the will of her deceased mother and they were distributed to the petitioner under a decree of final distribution dated May 21, 1927. Prior to that date the possession of the securities was in the executors of the estate for purposes of administration and not in the petitioner. In view of these facts we conclude that the petitioner had not held the assets, within the meaning

of section 101, for a period of two years before they were sold and is, therefore, not entitled to report the profit as capital net gain.

The view which we have taken herein is in accordance with our decision in the case of Nancy K. McFeely, 29 B. T. A.—(No. 177), which case is not identical upon the facts but presents the same question of law. In that case we held that the profit on the sale of shares of stock distributed to the petitioner on November 3, 1927, and sold by her on March 14, 1929, was not taxable as capital net gain, although the petitioner's donor (her mother) had acquired in 1919 an absolute title to one half of the estate of a deceased husband and the stock in question was received by the petitioner under an assignment to her, dated June 23, 1924, of 10 percent of the donor's one-half interest in the estate. We said:

> In our opinion the evidence does not support the contentions of the petitioner. While the shares of stock were in the custody of the executors of the estate of T. H. Given they were not in any proper sense "held" by the petitioner. If the executors by agreement of the parties or otherwise had sold the shares and realized a profit therefrom the profit would unquestionably have been taxable to the estate and not to the beneficiaries. Anderson v. Wilson, 289 U. S. 20.
>
> It seems clear that if Martha A. Given [the donor] had not assigned any portion of her estate to the petitioner, but had received the

1,000 shares of Radio stock in question on November 3, 1927, and had sold them on March 14, 1929, the profit would have constituted ordinary net income and would have been taxable accordingly, for she would have held them for a period of less than two years at date of sale. Section 113 (a) (5). We can not see that the petitioner stands in any better position than her donor.

The respondent's determination is sustained.
Reviewed by the Board.
Judgment will be entered for the respondent.

LANSDON, dissenting: I am able to agree with the prevailing opinion. Under the laws of California, which govern here as to rules of property, it is well established that title to devised property vests in the legatee at the date of the death of the prior owner. Probate Code, secs. 28, 300, 581. In Murphy v. Crouse, 135 Cal. 14, the Supreme Court of California held that the common law doctrine that the title to personal property passes to the executor and not to the heir has never prevailed in California and that in that state both real and personal property descend directly to the beneficiary named in the will, subject only to the qualified right in the personal representative who holds it for purposes of administration. In Western Pacific Co. v. Godfrey, 166 Cal. 346, the court held that "The legatee does not derive title from the decree of dis-

tribution but from the will, which takes effect immediately upon the death of the testator. The decree of distribution does not create the title. It merely declares that title accrued under the will." This principle was nationalized by the Supreme Court in Brewster v. Gage, 280 U. S. 327, and has been applied by the Board in many decisions.

The securities sold were a part of the estate of the petitioner's mother at the date of her death. In the light of the authorities above cited it is perfectly clear that an undivided one-fourth interest therein vested in the petitioner at March 28, 1926. I think it immaterial that such interest was not identified or segregated from the corpus of the estate until May 21, 1927, the date of distribution. From the moment of her mother's death, title to one fourth of all the securities left by the decedent vested in the petitioner. The executor or personal representative of the estate held the property only as the agent of the actual owner or of the probate court. His possession was the possession of the heirs. California Civil Code, sec. 1581. His duty is to marshal and conserve the assets of the estate and, under the direction and order of the proper court, distribute them to their real owners. Without the consent of the court he cannot convert a dollar's worth of the assets in his charge into new investments. Subjected to such limitations, it is plain that he holds only for the owners and that his acts are theirs.

In support of his determination the respondent relies on sections 113 (a) (5) and on 101 (c) (8) (B) of the Revenue Act of 1928, which provides that to

determine the two year period "there shall be included the period for which such property was held by any other person, if under the provisions of section 113, such property has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in his hands as it would have in the hands of such other person." I cannot see the applicability of this provision to the situation here. In my opinion the securities in question were acquired by the petitioner at the date of her mother's death and held by her until the date of the sale, and so, for the purpose of this proceeding, were never held by any other person.

TRAMMELL agrees with this dissent. [50]

United States Board of Tax Appeals
Washington

Docket No. 61036.

ISABEL K. DIBBLEE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

Pursuant to the determination of the Board, as set forth in its report promulgated February 13, 1934, it is

ORDERED and DECIDED: That there is a deficiency of $1,690.30 for the year 1928.

[Endorsed]: Entered Feb. 16, 1934.

[Seal] (Signed) H. F. SEAWELL
Member. [51]

[Title of Court and Cause.]

PETITION FOR REVIEW OF DECISION OF UNITED STATES BOARD OF TAX APPEALS BY THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT AND ASSIGNMENT OF ERROR.

Now comes Isabel K. Dibblee, the petitioner above named, by her attorney, Albert J. Dibblee, and respectfully shows:

I.

That petitioner is an individual, and at all times hereinafter mentioned was, and now is, a married woman, a citizen of the United States and of the State of California, and a resident of the Town of Ross, County of Marin, State of California.

II.

That petitioner filed her individual Federal Income Tax return for the taxable year 1928 on or before the 15th day of March, 1929 in the office of the Collector of Internal Revenue for the First District of California, which is within the jurisdiction of the United States Circuit Court of Appeals for the Ninth Circuit. [52]

III.

That the nature of the controversy is as follows, to wit:

Petitioner's mother, Harriet deWitt Kittle, a resident of the Town of Ross, Marin County, California, died on March 28, 1926, leaving a last will and testament whereby she devised and bequeathed all of her property to her four children, Lucia Hamilton Kittle, Isabel Kittle Dibblee, petitioner above named, Allen Irving Kittle and John Casper Kittle, share and share alike. Said will was duly admitted to probate and the estate was thereafter by decree of final distribution made and entered May 21, 1927, distributed according to the provisions of her said will, petitioner receiving one-fourth of certain stocks and bonds from her mother's estate. Thereafter during the period between April 17, 1928 and December 17, 1928, petitioner sold certain of the stocks and bonds so acquired by her under her mother's will, as aforesaid, all of which sales were made more than two years after her mother's death, but less than two years after the date of distribution of her mother's estate.

In her income tax return for the taxable year 1928 petitioner reported the profit from the sale of said stocks and bonds as "capital net gain" in the amount of $27,712.33, based upon the value of said securities as of March 28, 1926; the respondent upon audit of petitioner's said return fixed the profit on said sales at the sum of $28,441.86, based upon the fair market value of the securities at the date of

distribution, which latter amount petitioner has accepted as the profit upon said sales of said securities. [53]

The respondent in his notice of deficiency, dated November 3, 1931, held that the two year holding period contemplated by the capital net gain provisions of the Revenue Act of 1928 commenced to run from the date of distribution, and not from the date of death; that said sum of $28,441.86 was taxable as "ordinary net income" and not as "capital net gain," and computed the tax accordingly, resulting in an asserted deficiency of $1,690.30.

IV.

That petitioner appealed from the said determination of the respondent to the United States Board of Tax Appeals and the controversy was submitted to the said Board at a hearing held in San Francisco, California, on September 25, 1933, upon an agreed statement of facts. The Board thereafter sustained said determination of respondent and ordered judgment entered in his favor. The report and opinion of the Board was promulgated on the 13th day of February, 1934, and its final order adjudging that there was a deficiency of $1,690.30 for the year 1928 was entered on the 16th day of February, 1934.

V.

That said petitioner, being aggrieved by the conclusions of law contained in the opinion and decision of the Board of Tax Appeals, and by said

final order, desires to obtain a review thereof by the United States Circuit Court of Appeals for the Ninth Circuit, wherefore she petitions that a transcript of record be prepared in accordance with the rules of the United States Circuit Court of Appeals for the Ninth Circuit and transmitted to the Clerk of said Court for filing and appropriate action, to the end that the errors complained of may be reviewed [54] and corrected by said court.

VI.

That said petitioner's assignments of errors are as follows:

(1) The Board of Tax Appeals erred in holding and determining that there was a deficiency of $1,690.30, or any deficiency whatsoever, in the amount of petitioner's income tax for the taxable year 1928.

(2) The Board of Tax Appeals erred in not holding and determining that there was no deficiency for the taxable year 1928.

(3) The Board of Tax Appeals erred in holding and determining that the securities acquired by petitioner under her mother's will did not constitute "capital assets" of petitioner within the meaning of section 101(c)(8) of the Revenue Act of 1928, at the time she sold said securities.

(4) The Board of Tax Appeals erred in not holding and determining that the securities acquired by petitioner under her mother's will constituted "capital assets" of petitioner within the meaning

of section 101(c)(8) of the Revenue Act of 1928, at the time she sold said securities.

(5) The Board of Tax Appeals erred in holding and determining that the profit from the sale of said securities by petitioner were taxable as "ordinary net income" and not as "capital net gain."

(6) The Board of Tax Appeals erred in not holding and determining that the profits from the sale of said securities by petitioner were taxable as "capital net gain". [55]

(7) The Board of Tax Appeals erred in holding and determining that the securities acquired by petitioner under her mother's will were not "held" by her, within the meaning of section 101(c)(8) of the Revenue Act of 1928, from the date of the death of her mother.

(8) The Board of Tax Appeals erred in not holding and determining that the securities acquired by petitioner under her mother's will were "held" by her, within the meaning of section 101(c)(8) of the Revenue Act of 1928, from the date of the death of her mother.

(9) The Board of Tax Appeals erred in holding and determining that the securities acquired by petitioner under her mother's will were "held" by her, within the meaning of section 101(c)(8) of the Revenue Act of 1928, only from and after the date of decree of distribution of her mother's estate.

(10) The Board of Tax Appeals erred in holding and determining that the laws of the State of

California with respect to the passing of legal title to property transmitted by will are not controlling upon the Board as to the character of petitioner's property rights and title in and to the securities acquired by her under her mother's will.

(11) The Board of Tax Appeals erred in not holding and determining that the laws of the State of California with respect to the passing of legal title to property transmitted by will are controlling upon the Board as to the character of petitioner's property rights and title in and to the securities acquired by her under her mother's will.

(12) The Board of Tax Appeals erred in holding and [56] determining that because under section 113(a)(5) of the Revenue Act of 1928 the value of the securities on the date of distribution to petitioner is the basis for determining gain or loss, said date must necessarily be taken as the starting point for determining the period the securities were "held" by petitioner under section 101 (c)(8) of said Act.

(13) The Board of Tax Appeals erred in holding and determining that the possession of the securities by the executors pending administration of the estate was adverse to petitioner.

(14) The Board of Tax Appeals erred in not holding and determining that the possession of the securities by the executors pending administration of the estate was held by them as representatives of petitioner, and was not adverse to petitioner.

WHEREFORE petitioner prays that said decision of the United States Board of Tax Appeals

be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit, and that appropriate action be taken to the end that the errors herein complained of may be reviewed and corrected by said court.

ALBERT J. DIBBLEE
670 Mills Building
San Francisco, California.
Attorney for Petitioner. [57]

State of California,
City and County of San Francisco—ss.

Albert J. Dibblee, being first duly sworn, deposes and says:

That he is the attorney for the above named petitioner, Isabel K. Dibblee, and as such is duly authorized to verify the foregoing petition for review to the United States Circuit Court of Appeals for the Ninth Circuit; that he has read said petition for review and is familiar with the statements therein contained, and that the same are true to the best of his knowledge, information and belief.

ALBERT J. DIBBLEE

Subscribed and sworn to before me this 2nd day of May, 1934.

[Seal] IRENE MURPHY

Notary Public in and for the City and County of San Francisco, State of California. My commission expires March 10, 1938.

[Endorsed]: United States Board of Tax Appeals. Filed May 8, 1934. [58]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the United States Board of Tax Appeals:

Please prepare at petitioner's expense a transcript of the record in the above entitled cause within sixty days from the filing of the petition for review in the above entitled cause, and transmit the same to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, including in said transcript, copies, duly certified as correct, of the following documents:

1. The docket entries of proceedings before the Board.
2. The pleadings before the Board.
3. Opinion and decision of the Board.
4. The final order of redetermination entered on February 16, 1934.
5. The petition for review.
6. The agreed statement of facts upon which the above entitled cause was heard.
7. Any and all orders of enlargements made by the Board [59] with respect to the preparation of record on appeal. (Not included in record.)
8. This praecipe.

Said transcript to be prepared, certified and transmitted as required by law and the rules of the United States Circuit Court of Appeals for the Ninth Circuit.

You are hereby advised that on the 2nd day of May, 1934, being the same date as that on which

the petition for review in the above entitled cause was mailed to the Board of Tax Appeals, a copy of said petition and a notice of the filing of the same, was mailed to the respondent herein, addressed to him at Washington, D. C.

Dated: May 2, 1934.

ALBERT J. DIBBLEE
670 Mills Building
San Francisco, California
Attorney for Petitioner.

[Endorsed]: United States Board of Tax Appeals. Filed May 8, 1934. [60]

[Title of Court and Cause.]

CERTIFICATE

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 60, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 2nd day of June, 1934.

[Seal] B. D. GAMBLE
Clerk, United States Board
of Tax Appeals.

cs

[Endorsed]: No. 7524. United States Circuit Court of Appeals for the Ninth Circuit. Isabel K. Dibblee, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review an Order of the United States Board of Tax Appeals.

Filed June 19, 1934.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

No. 7524

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

ISABEL K. DIBBLEE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Upon Petition to Review an Order of the United States Board of Tax Appeals.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

United States Circuit Court of Appeals
for the Ninth Circuit

Extract from minutes of Friday, January 25, 1935.

Before: WILBUR and GARRECHT,
Circuit Judges, and
CAVANAH, District Judge.

[Title of Cause.]

ORDER OF SUBMISSION.

ORDERED petition to review in this cause argued by Mr. Albert J. Dibblee, counsel for petitioner, and by Mr. Lucius A. Buck, Special Assistant to the Attorney General, Counsel for respondent, and submitted to the court for consideration and decision.

[Title of Court.]

Extract from minutes of Tuesday, February 5, 1935.

Before: WILBUR and GARRECHT,
Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENT.

By direction of the court, ORDERED that the typewritten opinion this day rendered by this court in above cause, be forthwith filed by the clerk and that a judgment be filed and recorded in the minutes of this court in accordance with the opinion filed.

[Title of Court and Cause.]

OPINION.

Upon Petition to Review an Order of the United States Board of Tax Appeals.

Before: WILBUR and GARRECHT,
Circuit Judges, and
CAVANAH, District Judge.

CAVANAH, District Judge:

This case involves a deficiency in income taxes in the sum of $1690.30 for the year 1928. The Board of Tax Appeals redetermined the deficiency and affirmed the determination of the Commissioner, wherein it was held that petitioner acquired the securities in question at the date of the distribution and not at the time of her mother's death. Petitioner contends that the Board erred in holding that the two year period contemplated by the "capital net gain" provision of Section 101 of the Revenue Act of 1928 commenced to run from the date of distribution to her of the securities she had acquired by general bequest under the will of her mother, and not from the date of her mother's death; so the sole question is whether the gain on the sale of the securities received by petitioner as a general legatee under her mother's will, less than two years after distribution and more than two years after the death of the testatrix, constitutes capital net gain or ordinary income.

Petitioner is a citizen and resident of California. Her mother died testate on March 28, 1926, and

disposed of her property by will, leaving all of it to four of her children in equal shares. The will was probated in California and the estate distributed under a decree of final distribution on May 21, 1927, and petitioner received one-fourth of certain bonds and securities so distributed. More than two years after the death of the testatrix, but less than two years after the date of distribution, petitioner sold some of the securities. In her income tax return for 1928 she reported from such sales as capital net gain the amount of $27,712.33, based on the value of the securities as of the date of the death of the testatrix, while the profit based on fair market value at the time of distribution was $28,441.86. Respondent, in auditing the return, included this latter amount as ordinary income and determined the deficiency in dispute.

The controversy arises from an application and interpretation of the provisions of Section 101 and Section 113 (a) (5), which definitely establish both the method of determining the period of holding and the basis for the determination of the taxpayer's gain. They are to be read together and, when done so, on all personal property acquired by specific bequest the basis shall be the fair market value of the property at the time of the death of the decedent, and if the property be acquired either by will or by intestacy the basis shall be the fair market value of it at the time of distribution to the taxpayer. Capital assets, as defined by Section 101 (c) (8) of the Revenue Act means "property held by the taxpayer for more than two years".

Petitioner asserts that under these provisions of the act the profit resulting from the sale of the securities was "capital gain" and, consequently, taxable as such, and not as "ordinary income", and if correct there would be no deficiency.

The securities upon which petitioner realized a profit of $28,441.86 were the property of decedent at the time of her death, which was more than two years before the date of sale, and were acquired by petitioner as a general bequest of personal property by will, and would seem to be governed by the provision in Section 113 (a) (5) of the act, that

> "In all other cases if the property was acquired either by will or by intestacy, the basis shall be the fair market value of the property at the time of the distribution to the taxpayer."

But it is argued by petitioner that the laws of California determine the date from which the taxpayer "held" the securities in question, as under the laws of that State the legal title to property transmitted by will or intestacy vests immediately upon the decedent's death in the devisee, legatee or heir, as the case may be. We cannot agree with the correctness of the contention, for the Federal statute determines the time the taxpayer "acquired" personal property, when acquired as a general bequest by will, to be at the time of the distribution to the taxpayer, and not at the time of decedent's death. Therefore, the taxpayer is considered as "holding" the securities only from the time of distribution. The purposes or effect of the revenue laws of the

United States cannot be contravened by state law. Burk-Waggoner Assn. v. Hopkins, 269 U. S. 110; *Weiss v. Wiener,* 279 U. S. 333; Corliss v. Bowers, 281 U. S. 376, 378.

The decision of the Board of Tax Appeals is affirmed.

[Endorsed]: Opinion. Filed Feb. 5, 1935. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 7524

ISABEL K. DIBBLEE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

JUDGMENT

Upon Petition to Review an Order of the United States Board of Tax Appeals,

This Cause came on to be heard on the Transcript of the Record from the United States Board of Tax Appeals and was duly submitted.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the Order of the said Board of Tax Appeals in this Cause be, and hereby is affirmed.

[Endorsed]: Filed and entered Feb. 5, 1935. Paul P. O'Brien, Clerk.

[Title of Court.]

Extract from minutes of Friday, September 6, 1935.

Before: WILBUR, GARRECHT, DENMAN, and MATHEWS, Circuit Judges.

[Title of Cause.]

ORDER DENYING PETITION FOR A REHEARING.

Upon consideration thereof, and by direction of the court, IT IS ORDERED that the petition of taxpayer, filed March 6, 1935, for a rehearing of above cause be, and hereby is denied.

[Title of Court and Cause.]

ORDER STAYING ISSUANCE OF MANDATE

Upon application of Albert J. Dibblee, counsel for the petitioner, and good cause therefor appearing, IT IS ORDERED that the issuance, under Rule 32, of the mandate of this Court in the above cause be, and hereby is stayed to and including October 7, 1935; and in the event the petition for a writ of certiorari to be made by the petitioner herein be docketed in the Clerk's office of the Supreme Court of the United States on or before said date, then the mandate of this Court is to be stayed until after the said Supreme Court passes upon the said petition.

CURTIS D. WILBUR
Senior United States Circuit Judge.

Dated: San Francisco, California, September 6, 1935.

[Endorsed]: Filed Sep. 6, 1935. Paul P. O'Brien, Clerk.

[Title of Court and Cause.]

CERTIFICATE OF CLERK OF U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, PAUL P. O'BRIEN, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing ninety-six (96) pages, numbered from and including 1 to and including 96, to be a full, true and corect copy of the entire record of the above entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the petitioner and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 20th day of September, A. D. 1935.

[Seal] PAUL P. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 14, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted, and the case is assigned for argument immediately following No. 439.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.